

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1451

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Docket No. 77-1451

UNITED STATES OF AMERICA,

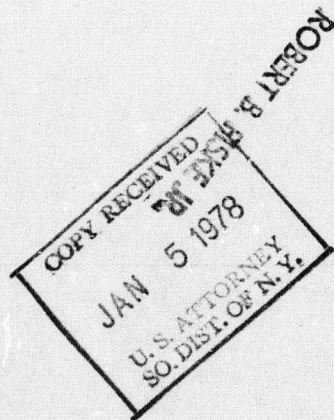
Appellee,

-v.-

JAMES PATRICK FLYNN,

Defendant-Appellant

APPENDIX OF DEFENDANT-APPELLANT
JAMES PATRICK FLYNN



DANIEL H. MURPHY, II,
Attorney for Defendant-Appellant
James Patrick Flynn
Office and P.O. Address:
420 Monterey Avenue,
Pelham Manor, New York 10803
Tele.: (914) 738-4715

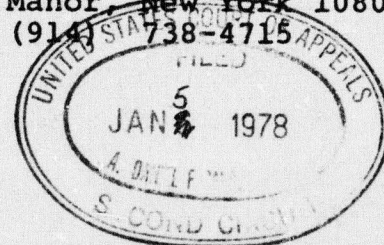


TABLE OF CONTENTS

Docket Sheets	1A
Indictment S. 74 Cr. (CBM)	6A
Judgment	11A
Notice of Appeal	12A
Gx 71-11	13A
Trial Transcript	
Ellen Fitzgerald materials	37
Saksenberg	49
Simonds	53
Dreichler	55
Costa	59
Pieroni	132
Engel	146
Nielson	158
Heath	194
Bambakos	231
Holik	264
Whooley	305
McCoy	373
Rakoff	442
Buckley	475
Derian	481
Government Exhibit 71-11	508
Blecha	529
Nemecek	585
Cloyed	597
Miller	623
Riley	671
Pina	716
Cooperstein	806
Government argument re Gx 17-19	868
Prosecution Summation	899
Prosecution Rebuttal Summation	998
Charge of the Court	1020
The Sentence	hpdr 1

PAGINATION AS IN ORIGINAL COPY

Form No. 100
CRIMINAL DOCKET

JUDGE MOTLEY

74 CRIM 386 (C)

TITLE OF CASE

ATTORNEYS

THE UNITED STATES

For U.S.: DON BUCHWALD

vs.

For Defendant: AUGER

JAMES PATRICK FLYNN

264-6423-1057-1110

RICHARD THOMSON FORD, a/k/a Vincent A. Thomas,

a/k/a John A. August.

For Defendant:

7/10

ABSTRACT OF COSTS

AMOUNT

CASH RECEIVED AND DISBURSED

(01)	DATE	NAME	RECEIVED	DISBURSED
Fine				
Clerk (DEFT #1 CLST) 2 JS-3				
Marshal,				
Attorney,				
COMMUNIST 18				
COMMUNIST 371,2312,2113(a)& 2				
transp. of vehicle stolen in interstate				
commerce. (Ct.2) Bank robbery (Ct.3)				
Use of firearm to commit federal felony. (Ct.4)				
transp. so to do. (Ct.1)				
		(Four Counts)		

DATE

PROCEEDINGS

3-74	Filed indictment. (Superseding 74Cr279 and assigned to Bauman, J.)
4-5-74	Deft. prod. on writ. No appearance by counsel. Pleading adjd to 4-15-74. Deft. consent to being fingerprinted. Assignment of counsel adjd. until 4-8-74. Writ adjd. to 4-15-74. TENNEY, J.
5-74	James P. Flynn - B/W ordered.
	RICHARD T. FORD. Deft. (Atty Present) produced on writ. PLEADS NOT GUILTY. 10 days for motions. BAUMAN, J.
5-74	JAMES P. FLYNN - B/W issued.

A

1A

JUDGE MOTLEY

74 Cr.336

Page 2

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
4-25-74	RICHARD T. FORD - (Atty Present) Produced on Writ. Trial set for May 28-74. Writ add to 5-28-74. Court held deft. in civil contempt. BAUMAN, J.		
5-1-74	Filed notice of appearance by Robert Florsheim, 10 Columbus Cir. NYS., 586-3300.		
5-17-74	Filed Govt. notice of motion to adjourn trial as to deft. Ford.		
5-16-74	Filed one sealed envelope ordered sealed and placed in vault Room 602. BAUMAN, J.		
5-22-74	Filed MEMO END on Govt. motion filed 5-17-74. Motion granted. Trial date Aug. 21-74. So Ordered. BAUMAN, J.		
7-10-74	Filed transcript of record of proceedings, dated April 25, 1974		
JUL 12-74	Filed transcript of record of proceedings, dated MAY 22, 1974		
JUL 12-74	Filed transcript of record of proceedings, dated APRIL 15, 1974.		
JUL 12-74	Filed transcript of record of proceedings, dated APRIL 15, 1974.		
7-12-74	Filed transcript of record of proceedings, dated APRIL 8, 1974.		
9-30-74	RICHARD T. FORD - Filed affdvt. & notice of motion for an order directing the Govt. to furnish all exculpatory evidence		
11-4-74	JAMES PATRICK FLYNN - Filed 1 envelope ordered sealed and impounded and placed in vault in rm.602.....Motley, J.		
11-6-74	RICHARD T. FORD.- Filed memo endorsed on motion filed: For the reasons set forth, in the record this date, The within motion is denied, So ordered Motley, J		
11-6-74	RICHARD T. FORD.- Filed memo endorsed on motion : The within motion is granted.		
	THE TRIAL OF THIS ACTION IS SCHEDULED to begin on Feb 18, 1975 as to deft. Ford.		

DATE	PROCEEDINGS
11-1-74	Govt's motion to adjourn trial to 2-18-75 Granted. Deft Fords motion to dismiss indictment for lack of speedy trial DENIED.....MOTLEY, J.
12-17-74	Filed transcript of record of proceedings, dated Oct. 16, 1974
8-8-75	RICHARD FORD - Filed affdvt. of D.D. Buchwald, AUSA in support of a writ..Ret. 9-2-75.
8-20-75	Filed Govt's requests to charge....
9-4-75	RICHARD T. FORD - Filed notice of motion to dismiss the indictment...With memo endorsed....The motion to dismiss for lack of speedy trial denied.... Motley, J....m/n
9-2-75	RICHARD THOMSON FORD - Jury trial begun before Motley, J.
9-3-75	Trial cont'd.
9-4-75	Trial cont'd.
9-5-75	Trial cont'd.
9-8-75	Trial cont'd.
9-9-75	Trial cont'd. and concluded...Deft Guilty on all counts...P.S.I. ordered Sent. 10-14-75...Writ satisfied.....Motley, J.
9-12-75	FLYNN James Patrick A Closed statistically because (X) defendant) is () co-defendant) a () witness) fugitive. In all other respects this case is still pending.
10-14-75	RICHARD THOMSON FORD - Filed Judgment (Atty. Ronald Chisholm, present) the deft is committed for imprisonment for a period of FIVE YEARS on each of counts 1, 2, 3 and 4 to run concurrently with each other...It is recommended that the Attorney Gen'l. pursuant to Section 4082 of T1.18, U.S. Code, arrange to have this sentence served concurrently with sentence deft is presently serving at Mass. State Prison, in so far as the time that can be served concurrently can be served...MOTLEY, J..... Ent. on 10-15-75-----
11-6-75	R. T. FORD - Filed commitment & entered return. Dft delivered to MASS CORR. INSTITUTION.
11-20-75	Filed transcript of record of proceedings, dated Sept. 8, 9, 1975
1-29-76	Filed transcript of record of proceedings, dated Sept. 2, 3, 4, 5, 1975
05-24-76	R.T. FORD.- Filed notice of appeal from the judgment of conviction entered on the 14th day of October 1975 with memo end. Leave to appeal in forma pauperis is hereby granted; ordered that this appeal be filed nunc pro tunc as of October 20, 1975. MOTLEY, J. Mailed notice to deft. M.C.I. Norfolk P.O. Box 43 Norfolk, Mass. 02056 & U.S. Atty.

PROCEEDINGS

- 3-76 Filed notice that the original record on appeal has been certified and transmitted to the U.S.C.A.
- 4-8-76 R.T. FORD - Filed motion dated 4-7-76 for appointment of named counsel... WITH MEMO ENDORSED... Motion for appointment of named counsel DENIED... So ordered... Motley, J. Copy sent to deft....
- 4-13-76 R.T. FORD - Filed notice that the supplemental record on appeal has been certified and transmitted to the USCA this date..
- 7-19-76 RICHARD THOMSON FORD - Filed affdvt. & notice of motion for an order permitting counsel to examine sealed affdvts filed by the Govt.... Ret. 10-20-76....
- 9-20-76 Sealed envelope of 5-16-74 Ordered unsealed and RESEALED and placed in clerk's vault. Motley, J.....
- 10-20-76 Sealed envelope of 11-4-74 Ordered unsealed at 2P.M. and RESEALED at 4P.M. and placed in Clerks vault..... Motley, J.....
- 10-21-76 RICHARD T. FORD - Filed memo endorsed on motion filed 10-19-76 MOTION IS DENIED*** Motley, J.... mailed notice...
- 11-17-76 Filed transcript of record of proceeding in 2-18-75 and 10-14-75
- 2-25-77 Deft. JAMES PATRICK FLYNN - Atty. Ronald Chiholm present... PLEADS NOT GUILTY trial adjd to 4-12-77 10a.m. Bail set by Mag Jacobs in amt. of \$150,000 cont'd. Deft. is remanded..... Motley, J.
- 2-28-77 JAMES PATRICK FLYNN - Filed papers recvd. from Magistrate... Docket sheet, warrant of removal.....
- 3-28-77 JAMES PATRICK FLYNN - Filed the following papers received from Mag. of District of Mass.) Docket Entry Sheet, Oath of Francis J. Pieroni Special Agent - FBI Dated: 2-17-77, Financial Affidavit, appointment of atty for deft- Jack I. Zalkind, 15 Court Square, Boston Ma. Phone N 227-3951, motion for reduction of bail, petition for warrant of removal and Warrant of Removal, Dated: 2-17-77.
- 4-7-77 S.P. FLYNN - Filed transcript of record of proceeding dated 2-23-77
- 4-7-77 S.P. FLYNN - Filed transcript of record of proceeding dated 2-25-77
- 5-11-77 J.P. FLYNN - JURY TRIAL Begun as to deft Flynn. (Atty. Ronald Chiholm present)
- 5-12-77 TRIAL CONT'D.
- 5-13-77 TRIAL CONT'D.
- 5-16-77 TRIAL CONT'D.
- 5-17-77 TRIAL CONT'D.
- 5-18-77 TRIAL CONT'D. Jury Charge Began 2:50P.M. JURY BEGAN DELIBERATIONS.
- 5-19-77 TRIAL CONT'D. JURY RESUMED DELIBERATIONS
- 5-20-77 TRIAL CONT'D. Juror #5 called in SICK -Deliverations ADJourned until 5-23-77 10AM.
- 5-23-77 TRIAL CONT'D. Jury Resumed Deliberations 2:50P.M. Jury FINDS DEFT GUILTY on CTS 1 & 2 NOT GUILTY on CTS 3 & 4. P.S.I. Ordered. SENT. ADJ'd. to 7-1-77 11A.M. DEFT REMANDED. MOTLEY, J

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
May 23-77	(Document No.) Filed true copy of U.S.C.A. order with opinion attached.. Judgment of District Court is reversed and the action is remanded with directions to dismiss the indictment.. copy notice to D.J. Gottlieb and U.S. ATTY...				
June 16-77	Filed COPY of letter to D.J. Gottlieb and F.T. Davis dated 6-15-77 from Judge C.B. Motley...				
July 1-77	Filed Judgment (Atty. Ronald Chrisholm, present) The defendant is committed for imprisonment for a period of FIVE (5) YEARS on count 1 and THREE (3) YEARS on count 2 to run consecutively with each other. Defendant acquitted on counts 3 and 4. MOTLEY, J Entered on - 7-1-77 Issued Commitment and Copies.				
July 5-77	Filed Govt's requests to charge.				
July 5-77	Filed Govt's supplemental requests to charge.				
July 8-77	Riled REMAND - - without bail. an extract of the minutes dated: 5-23-77.				
July 8-77	Filed REMAND - - bail fixed in sum of \$150,000.00-prisoner remanded to custody of US Marshall in lieu of bail. An extract of the minutes dated: 2-25-77.				
July 19-77	JAMES PATRICK FLYNN - Filed transcript of record of proceedings Dated: May 11, 12, 13, 1977.				
July 19-77	JAMES PATRICK FLYNN - Filed transcript of record of proceedings dated: May 16, 17, 18, 19, 23, 1977				
July 29-77	RICHARD T. FORD - Filed Deft's Affidavit and notice of motion for an order releasing deft on his own recognizance or on minimal bail pending determination of appeal. RET: 8-8-77.				
7-10-77	JAMES P. FLYNN - Filed NOTICE OF APPEAL of deft to USCA 2nd Circuit from judgment filed 7-1-77.... copy mailed to atty. for debtor Ronal J. Chrisholm, One Center Plaza, Suite 240 Boston, Mass. 02108 and copy to U.S. Attorney.				

A TRUE COPY

RAYMOND E. BURCHARDT, Clerk

By

Deputy Clerk

5A

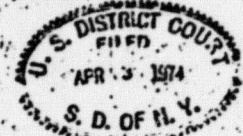
74-1111-336

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

JAMES PATRICK FLYNN and
RICHARD THOMSON FORD, a/k/a
"Vincent A. Thomas," a/k/a
"John A. August,"
Defendants,

INDICTMENT



COURT ONE

The Grand Jury charges:

In or about October, 1971, in the Southern District of New York and elsewhere, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly did conspire and agree with each other and with other persons to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 2382, 2383(a) and 924(c)(1).

It was part of this conspiracy that JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August) the defendants, would unlawfully, wilfully and knowingly transport in interstate commerce from Boston, Massachusetts to Middletown, New York, a motor vehicle, to wit, a blue 1971 Plymouth Fury III bearing Massachusetts registration 43965F, knowing this motor vehicle to have been stolen.

MICROFILM

APR 3 - 1974

It was further part of this conspiracy that JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly, by force and violence and by intimidation, would take from the person and presence of another, money in the approximate amount of \$203,938, belonging to, and in the care, custody, control, management and possession of the Orange County Trust Company, Route 211, Middletown, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

It was further part of this conspiracy that JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly would use firearms, to wit, a shotgun and two handguns, to commit a felony for which they may be prosecuted in a court of the United States, namely, the felony set forth in Count Three of this Indictment.

OVERT ACTS

In furtherance of this conspiracy, and to effect its objects, the following overt acts, among others, were committed by the defendants in the Southern District of New York:

1. On or about October 17, 1971, the defendant RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August) resided at the "Sugar's Bungalows," Jersey Avenue, Greenwood Lake, New York under the assumed name of Vincent A. Thomas.

71-3797
2. On or about October 18, 1971, the defendant JAMES PATRICK FLYNN resided in Room 123 of the Holiday Inn, Middletown, New York, a room then registered under the fictitious name of Robert F. Barry of Lynn, Massachusetts.

3. On or about October 20, 1971, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, entered the Orange County Trust Company, Route 211, Middletown, New York, wearing masks and gloves and carrying firearms.

4. On or about October 20, 1971, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, exited from a beige 1972 Plymouth Fury III with tan vinyl top and entered a blue 1971 Plymouth Fury III, in the Middletown Senior High School parking lot.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 18th day of October, 1971, in the Southern District of New York and elsewhere, JAMES PATRICK FLYNN and RICHARD THOMSON FORD, (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly did transport in interstate commerce from Boston, Massachusetts to Middletown, New York, a motor vehicle to wit, a blue 1971 Plymouth Fury III bearing Massachusetts registration 43965F, knowing this motor vehicle to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

in the presence of the attorney for the government
the defendant appeared in person on this date

RECEIVED
JULY 1 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and a trial without counsel and that he
has counsel appointed by the court and the defendant thereupon waived assistance of counsel

☒ WITH COUNSEL

RONALD CHISHOLM, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE

☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of conspiring to violate Sections
2312, 2313(a) and 924(c)(1) and transporting a stolen car in inter-
state commerce as charged in counts 1 and 2.
T. 18, USC., Secs. 371, 2312 and 2.

SENTENCE
OR
PROBATION
ORDER

The court is whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary
was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant be
committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5)
YEARS on count 1 and THREE (3) YEARS on count 2 to run consecutively
with each other.

SPECIAL
CONDITIONS
OF
PROBATION

Defendant acquitted on counts 3 and 4.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the
reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at
any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke
probation for a violation occurring during the probation period.

COMMITMENT
OR
CONFER-
RATION

The court orders commitment to the custody of the Attorney General and recommends,

MICROFILM

JUL - 5 1977

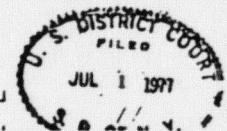
CONSTANCE BAKER MOTLEY

SIGNED BY

☒ U.S. District Judge

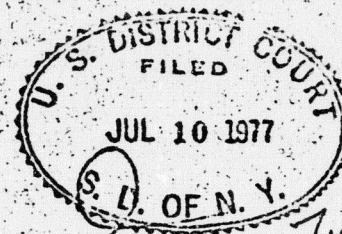
☐ U.S. Magistrate

It is ordered that the Clerk deliver
a certified copy of this judgment
and commitment to the U.S. Mar-
shal or other qualified officer.



7/1/77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA)

v.)

JAMES P. FLYNN)

NOTICE OF APPEAL

NO. 74Cr. 336 (CBM)

Now comes the Defendant, James P. Flynn, in the above-numbered indictment, and claims an appeal to the United States Court of Appeals for the Second Circuit from the judgment of conviction and sentence entered on July 1, 1977.

By his Attorney,

Ronald J. Chisholm
One Center Plaza, Suite 240
Boston, Massachusetts 02108

Tel. #617-742-6050

July 6, 1977

CERTIFICATE OF SERVICE

July 6, 1977

I, Ronald J. Chisholm, attorney for the Defendant, hereby certify that a copy of the foregoing Notice of Appeal was this day sent to Don Buchwald, Attorney for the United States by mailing a copy of said Notice of Appeal, first class mail, postage prepaid to U. S. Courthouse, Foley Square, New York, New York 10007.

Ronald J. Chisholm

34

Copy
mailed
8/1/77

DDB:gdd

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

JAMES P. FLYNN :

Defendant. :

STIPULATION

S. 74 Cr. 336 (CMB)

IT IS HEREBY STIPULATED AND AGREED by and between
the parties that if called as a witness and sworn, Mr.
Ralph Hodgkins, would testify as follows:

1. Throughout October of 1971 I was the Inventory
Manager of Hertz Rent-A-Car, located at Logan International
Airport in East Boston, Massachusetts.

2. Late in the day on October 20, 1971 I was
contacted at Logan Airport by an FBI agent concerning Hertz
Rent-A-Car # 57964, an automobile owned by Hertz and
utilized in its rent-a-car operations. Hertz's records
revealed that this was a 1971 blue Plymouth Fury III,
bearing Massachusetts registration 43965F, with Vehicle
Identification Number PH43K1F192537.

3. Hertz's record, which are made, kept and
maintained by Hertz in the normal course of its business,
further show that the above-mentioned blue 1971 Plymouth
Fury III had last been rented by Hertz under Hertz Rental
Agreement # 5591211-3 to a Mr. John J. McGloin, Jr.,
12 Footpath Road, Chelmsford, Massachusetts; Mr. McGloin
returned the automobile to Hertz's rent-a-car office in
Dellerica, Massachusetts on October 16, 1971; when returned
by Mr. McGloin on October 16, 1971 the car had a mileage
reading of 11,215 miles.

4. Hertz's records further show that the above-mentioned blue 1971 Plymouth Fury III was thereafter, on the day of October 18, 1971, transported from Hertz's Ballerica, Massachusetts office to Hertz at Logan Airport by Mr. Franklin Doherty, a Hertz employee. The mileage of the car upon arrival at Logan Airport on October 18, 1971, as reflected by Hertz's records, was 11,243 miles.

5. During that period of time, inventories of Hertz rent-a-cars were normally conducted on the 15th of each month. When I was notified by the FBI that the car had been recovered in Middletown, New York on October 20, 1971, I conducted an inventory of Hertz's automobiles at Logan Airport and confirmed that the car was, indeed, missing. This was the first time that I realized that the car was missing. In October, 1971 Hertz Rent-A-Cars were scattered in several lots at Logan Airport and not kept within a fenced or closed in area.

6. Hertz's records further reflect that on November 5, 1971 the above-mentioned blue 1971 Plymouth Fury III was picked up by Hertz employees in Middletown, New York from the New York State police. At the time the car was picked up it had a mileage reading of 11,637 miles.

Dated: New York, New York

March , 1977

DOJ D. EICHWALD
Assistant United States Attorney

Attorney for Defendant
James P. Flynn

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF NEW YORK

} SS

_____ being duly sworn,
deposes and says that he is employed in the office of _____
_____ United States Attorney for
the Southern District of New York, attorney for the _____
herein.

That on the _____ day of _____, 19 _____, he did serve a true copy of
the hereto annexed _____

_____ on the office of _____
attorney for the _____ herein, located at _____

_____ Borough of _____, City of New York, by leaving a true copy of the same with
the person in charge of said office, there being no one present who was authorized to give an admission
of service.

Sworn to before me this _____

_____ day of _____, 19 _____

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF NEW YORK

} SS

_____ being duly sworn,
deposes and says that he is employed in the office of the United States Attorney for the Southern
District of New York.

That on the _____ day of _____, 19 _____, he served a copy of the within
_____ by placing the same in a properly franked envelope addressed to: _____

And deponent further says that he sealed the said envelope and placed the same in the mail chute
drop for mailing in One St. Andrews Plaza, Borough of Manhattan, City of New York 10007.

Sworn to before me this _____

_____ day of _____, 19 _____

Sir:

You will please take notice that a
of which the within is a copy, was this day
duly entered in the within entitled action,
in the office of the Clerk of this Court.

Dated, N. Y., _____, 19____

Yours, etc.,

United States Attorney
Attorney for _____

To

Attorney for _____

Sir:

Please take notice that the within
will be presented for settlement and sig-
nature to the Honorable
United States District Judge, at the office of
the Clerk, United States Courthouse, Foley
Square, Borough of Manhattan, City of New
York, on the ____ day of ____, 19____, at
10:30 o'clock in the ____ noon or as soon
thereafter as counsel can be heard.

Dated, N. Y., _____, 19____

Yours, etc.,

United States Attorney
Attorney for _____

To

Attorney for _____

Form No. USA-225-270
(Rev. 5-1-55)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JAMES F. FLYNN

Defendant.

STIPULATION
S 74 Cf. 336 (CMB)

ROBERT B. FISKE, JR.

TEL. 261-3311 United States Attorney
XXXXXX Attorney for _____

791-1057
Dated and filed a copy of the within at New York
by admitted.

New York, _____, 19____

Attorney for

To

Attorney for

PPH-01-6-15-76-208-5677

MR. BUCHWALD: Ladies and gentlemen, Government Exhibit 101 reads as follows:

"It is hereby stipulated and agreed by and between the parties that if Joan L. Swift was called as a witness, she would testify as follows:

"1. I am a county recorder for Clark County, Nevada, which includes the City of Las Vegas, Nevada. I have reviewed records maintained by the Clark County recorder's office in the normal course of its affairs which reflect the following information: On February 4, 1970, two individuals who gave their names as Joseph Michael Fitzgerald and Ellen G. Dempsey were married by Justice of the Peace Roy A. Woofter. This marriage was recorded on February 24, 1970, in Book #322, instrument #530551, marriage certificate #A-301572.

"The marriage was witnessed by M.W. Christner and Danny Ray Trout, and the marriage application stated that both Joseph Michael Fitzgerald and Ellen G. Dempsey were from Hollywood, California. The marriage certificate of the above married was mailed to the married couple at 1805 El Cerrito Place, Hollywood, California, Zip Code 90028."

That is Government Exhibit 101.

Government Exhibit 102, as you can see, is the affidavit of application for marriage license, a certified

2 copy, from Clark County, Nevada, which again lists the
3 names Joseph Michael Fitzgerald and Ellen G. Dempsey
4 and lists their residence as Hollywood, California, and it has
5 their dates of birth. This is a certified copy of the
6 application for marriage license.

7 Government Exhibit 103 is the marriage -- is
8 a certified copy from Clark County, Nevada, of the marriage
9 certificate itself, again listing the date February 24,
10 1970, and the names Joseph Michael Fitzgerald and Ellen
11 G. Dempsey, from the State of California.

12 Your Honor, at this time the Government offers
13 Exhibits 104 and 105 for identification into evidence.

14 MR. CHISHOLM: I would objection to a portion
15 of 105 and I would object to a portion of 104.

16 (At the side bar.)

17 MR. CHISHOLM: Referring to Exhibit 104 for
18 identification, there is a reference to Ellen Grace Fitz-
19 gerald and a mugshot is the expression in the document
20 of Ellen Grace Fitzgerald. There is a photograph of that
21 particular -- it appears to be that female, but I object
22 to the expression in the document "a mugshot".

23 MR. BUCHWALD: This is their terminology,
24 because on every California license the person's picture
25 appears. We can make it absolutely clear, if Mr. Chisholm

2 wants, that by "mugshot" it is simply referring to the
3 picture on the license.

4 MR. CHISHOLM: If Mr. Buchwald will clear that
5 point up, I have the same objection on both exhibits.
6 Mugshot has certain connotations to some people.

7 MR. BUCHWALD: I have no problem.

8 THE COURT: With that clarification, it will
9 be admitted.

10 (In open court.)

11 THE COURT: Government Exhibits 104 and 105 are
12 received.

13 (Government Exhibits 104 and 105 were received
14 in evidence.)

15 MR. BUCHWALD: Ladies and gentlemen, Government
16 Exhibits 104 and 105 respectively are certified copies of
17 documents from a California Department of Motor Vehicles.
18 104, as you will see, contains certified copies of papers
19 with the Department of Motor Vehicles, relating to an Ellen
20 Grace Dempsey, and you will see that one of the documents
21 included is a change of name certificate to Ellen Grace
22 Fitzgerald. It lists her driver's license, contains a
23 picture of her driver's license. The certification
24 refers to certified copies of driver's license application,
25 dated December 1969; application for change of name, dated

xxx

1
2 February 9, 1970; mugshot of Ellen Grace Fitzgerald,
3 which simply relates to the picture which appears on
4 the California driver's license. In California there
5 are pictures that appear on your driver's license. You
6 will see on the picture and on the driver's license it is
7 the name Ellen Grace Fitzgerald, 1805 El Cerrito Place,
8 Hollywood, California, and then the photograph of the individ-
9 ual whose driver's license this is.

10 Government Exhibit 105, the same type document,
11 certified copies of the driver's license application and
12 driver's license including the photograph of Joseph Michael
13 Fitzgerald, and once again you will see on that it contains
14 a picture of this individual, the name Joseph Michael
15 Fitzgerald, 1921 North Highland Avenue, Hollywood, Cali-
16 fornia.

17 These are the two certified copies of the
18 driver's license and driver's license application, and the
19 license containing the pictures of the individuals.

20 At this time, your Honor, the Government offers
21 Government Exhibit 112 for identification into evidence.

22 MR. CHISHOLM: I have no objection to 112.

23 (Government Exhibit 112 was received in
24 evidence.)

25 MR. BUCHWALD: If I may read this to the ladies

xxx

2 and gentlemen of the jury, this is also a stipulation,
3 ladies and gentlemen, which reads:

4 "It is hereby stipulated and agreed by the
5 parties that if called as a witness and sworn, Michelle
6 Lehner would testified as follows:

7 "I presently reside in Los Angeles, California.
8 In 1969 and 1970 I lived at 1805 El Cerrito Place, Holly-
9 wood, California, Apartment 105. Two individuals I
10 knew as Ellie and Joe Fitzgerald moved into an apartment
11 across the hall from me in the summer of 1969 and lived in
12 that apartment for approximately seven months. When they
13 first moved into the apartment, Ellie and Joe were not
14 married but while they were there they both told me at some
15 point that they had gone to Las Vegas and had gotten
16 married. Ellie Fitzgerald worked as a telephone operator
17 for a few months and she also had a job as a waitress at
18 a place called The Seventh Veil somewhere in Hollywood.

19 "Joe Fitzgerald worked as a bartender in Holly-
20 wood during the time I knew him. I have been shown the
21 photographs of the woman and the man contained in Government
22 Exhibits 104 and 105, and these are photographs of the
23 people I knew as Ellen and Joe Fitzgerald."

24 That is a reference to the photographs on the
25 preceding two exhibits.

At this time the Government offers Government Exhibits 115, 106A and 106B, 107A and 107B for identification into evidence.

THE COURT: Any objection?

MR. CHISHOLM: Not to 115, your Honor.

THE COURT: 115 is received.

(Government Exhibit 115 was received in evidence.)

(At the side bar.)

MR. CHISHOLM: Your Honor, I notice on the proffered Exhibit 106A, there is attached to it another exhibit number which refers to another trial apparently in this court. That particular identifying paper I would object to.

MR. BUCHWALD: All these exhibits, if we show them to the jury, in other words, it was the same number at the Ford trial, if we show them to the jury, if they call for them, why don't we just take the other tag off at that time. In the meanwhile I am holding it, I won't show it to them, to have continuity in the record.

(In open court.)

(Government Exhibits 106A, 106B, 107A and 107B were received in evidence.)

MR. BUCHWALD: Your Honor, at this time if I

2 might read Government Exhibit 115, a stipulation which
3 refers in turn to the other exhibits --

4 THE COURT: All right.

5 MR. BUCHWALD: Ladies and gentlemen, this is
6 again a stipulation:

7 "It is stipulated by the parties that if called
8 as a witness and sworn Mr. Max Greenfield would testify
9 as follows:

10 "Mr. Greenfield is the assistant treasurer of
11 the Concord Hotel located in Kiamesha Lake, New York.
12 Middletown, New York is about 25 miles from the Concord
13 Hotel in a southerly direction.

14 "Government Exhibits 106A, 106B, 107A and 107B
15 are made, kept and maintained by the Concord Hotel in the
16 regular course of its business.

17 "Government Exhibits 106A and 107A" -- these
18 two exhibits -- "are employment record cards of Vincent and
19 Natasha Thomas which are filled in by the employees when
20 they seek employment. The employees' photographs are
21 attached to the card, and their signatures appear on the
22 same side of the card that the photographs are attached to.
23 Under Item 10 on the cards, both Vincent and Natasha Thomas
24 listed prior employment at the Seventh Veil in Hollywood,
25 California.

"Government Exhibits 106B and 107B are payroll records which show, among other things, the time period during which the employee was employed by the Concord Hotel. These records for Vincent and Natasha Thomas show both having been hired on September 1, 1970, and the final date entry for both is October 23, 1970."

Your Honor, at this time the Government offers Exhibits 108 and 109 for identification into evidence.

MR. CHISHOLM: No objection to 108.

THE COURT: 108 received.

xxx (Government Exhibit 108 was received in evidence.)

THE COURT: 109 is the next one.

MR. CHISHOLM: No objection, your Honor.

THE COURT: Received.

xxx (Government Exhibit 109 was received in evidence.)

MR. BUCHWALD: Ladies and gentlemen, Government Exhibits 108 and 109 are certified copies of records from the New York State Department of Motor Vehicles; 108 is a certified copy of the application for registration of motor vehicle by Vincent Thomas, and 109 is a certified copy of the application for New York State driver's license by Vincent Thomas.

2 You will see on 108, at the time of this
3 application, Vincent Thomas listed his address as 9 Midlake
4 Park, Greenwood Lake, New York, and lists his employer
5 as Charles Reid, Inc., 33 South Hammock Road, Montvale,
6 New Jersey. Once again on the certified copy of the
7 application for driver's license, Vincent Thomas is listing
8 his address as 9 Midlake Park, Greenwood Lake New York.

9 At this time, your Honor, the Government offers
10 Exhibits 110 and 111 for identification into evidence.

11 THE COURT: Any objection?

12 MR. CHISHOLM: Yes, your Honor.

13 (At the side bar.)

14 MR. CHISHOLM: Your Honor, Exhibit 111 for
15 identification is a stipulation which I entered into with
16 Mr. Buchwald which would relieve the necessity of the witness
17 being here and testifying to the contents. I reserved with
18 Mr. Buchwald my right to object to the admissibility of
19 this, and I object to this, and it relates to Exhibit 110, on
20 the grounds of relevancy and materiality. It is not tied
21 to the defendant James Flynn, the defendant in this case.

22 THE COURT: The objection is overruled to 111
23 and 110.

24
25 (continued on next page.)

(In open court.)

(Government's Exhibits 110 and 111 were received in evidence.)

MR. BUCHWALD: At this time, your Honor, if I might read Government's Exhibit 111, which refers in turn to Exhibit 110. Ladies and gentlemen, this is another stipulation. "It is agreed by the parties that if Mr. Guy Larson was called as a witness and sworn, he would testify as follows: That he is the manager of the Western Union National Billing and Autoprocessing Center located at 2280 Schuetz Road in St. Louis, Missouri.

"Government Exhibit 110 is a Western Union money order application dated October 12, 1971, made and maintained in the regular course of business by Western Union. It is the practice of Western Union in the regular course of its business to make and maintain records of this type. It was made on October 12, 1971 at 11:26 a.m., that being the time and date indicated thereon. The time stamp 1971, October 12th, a.m., 11:41 appearing thereon indicates the time and date the money order was actually sent.

"The Cambridge, Massachusetts stamp appearing thereon indicates the Western Union office from which the money order was sent. The name of the sender of the

1
2 money order, the person to whom the money order was to
3 be sent, the address where the money order was to be sent
4 and the amount of the money order are indicated on the
5 application. The signature of the sender as well as the
6 sender's address and phone number are all so indicated.

7 "On November 18, 1974, I personally turned
8 Government Exhibit 110 over to an agent of the Federal
9 Bureau of Investigation. Government Exhibit 110 appears
10 now to me to contain the identical entries, markings and
11 notations as it did on November 18, 1974, when I turned
12 it over."

13 If I might indicate to the ladies and gentle-
14 men of the jury, sender's name, James P. Flynn, to
15 Ellen Fitzgerald. Address, care of Western Union,
16 Suffern, New York. Then at the bottom, the signature of
17 James P. Flynn, 33 Howe Street, Dor., Massachusetts.
18 There is a telephone number, 265-2395. That's Govern-
19 ment's Exhibit 110. At this time, your Honor, the govern-
20 ment offers Government Exhibits 31 and 31A for identifica-
21 tion and 202 and 202A for identification.

22 THE COURT: Any objection to Government's
23 Exhibits 31 and 31A?

24 MR. CHISHOLM: No, your Honor.

25 THE COURT: Received.

1
2 (Government's Exhibits 31 and 31A were re-
3 ceived in evidence.)

4 THE COURT: Any objection to Government's
5 Exhibits 202 and 202A?

6 MR. CHISHOLM: No, your Honor.

7 THE COURT: Received.

8 (Government's Exhibits 202 and 202A were
9 received in evidence.)

10 MR. BUCHWALD: Reading 31A to the ladies and
11 gentlemen of the jury, which refers to Government's Ex-
12 hibit 31, "It is hereby stipulated and agreed, ladies
13 and gentlemen, that Government Exhibit 31 is a rent re-
14 ceipt book made, kept and maintained in the regular course
15 of business by Mr. and Mrs. Harry Saksenberg, owners of
16 Sugar's Delicatessen, located on Jersey Avenue in Green-
17 wood Lake, New York, covering the rental of an apartment
18 located above the delicatessen in the same building and
19 a few bungalow cottages which are right next door to
20 Sugar's Delicatessen. The records reflect that on or
21 about September 9th of 1971, a couple by the name of
22 Vincent and Natasha Thomas moved into the apartment above
23 Sugar's, which is next to a second apartment above
24 Sugar's, in which the Saksenbergs themselves lived, that
25 being the date a \$25 deposit was paid by the Thomases to

Saksenbergs.

"The records further reflect rental payments by the Thomases on October 1st of 1971 covering the rent through the period ending October 31, 1971."

That's Government Exhibit 31A which refers to the rent receipt book, Government Exhibit 31.

Government's Exhibits 202 and 202A are as follows. 202 reads as follows: It is hereby stipulated and agreed between the parties that Government Exhibit 202A is an accurate transcript of questions put to Mrs. Belladonna Saksenberg by counsel and of her answers to such questions. Both counsel had an opportunity together to question the witness. The questions and the answers were written down by a reporter and the parties have agreed to have the transcript of the questions and answers read instead of requiring the witness to appear here personally and testify.

"It is further stipulated and agreed that the witness Belladonna Saksenberg would identify the co-defendant in this case, Richard Ford, as the person she knew as Vincent Thomas who lived in Greenwood Lake, New York."

The questions and answers, ladies and gentlemen, are as follows. It is just a few pages, and I will say question and answer, and you will know who is who.

"Q Mrs. Saksenberg, are you the wife of Harry Saksenberg?

"A Yes, sir.

"Q I would like to direct your attention to September and October of 1971, and ask you if you recall at that time a couple renting the apartment above Sugar's. Do you have any recollection of that?

"A Yes, sir.

"Q Do you remember the name of that couple or the names?

"A I believe the wife's name I remember, Natasha. The last name I believe was Thompson.

"Q What about the husband's name?

"A Offhand, I don't remember the first name, to be truthful, I don't remember his first name.

"Q During the period of time, if I mention the name Thomas, would that refresh your recollection as to the last name?

"A Pardon me?

"Q If I mentioned the name Thomas, would that refresh your recollection as being --

"A What did I say, Thompson?

"Q Thompson. During the period of time when the Thomases lived above Sugar's, did you and your husband have

any practice with respect to what was done at Sugar's on Tuesday?

"A What we did?

"Q Yes.

"A Well, we used to close our business. That was our day off.

"Q Would you leave the area on Tuesdays?

"A Mostly, yes.

"Q Did Natasha Thomas or Vincent Thomas ever mention to you where he or she worked?

"A Well, to my recollection, the husband was a plumber, I believe, and she was a waitress in Jorgenson's, I think. I am not sure. I could be mistaken, but she was a waitress.

"Q Do you recall when it was that the Thomases left the apartment above Sugar's?

"A Sometime in October.

"Q Did they give you notice that they were leaving?

"A No, sir.

"Q How did you find out or when did you find out that they had left or that they were leaving?

"A I received a telephone call.

"Q From whom?

"A From her husband.

1
2 "Q What did he say?

3 "A He said that he had -- he apologized because
4 he left, because he said that we had treated him very
5 nicely, and he says he received a better offer for a better
6 position where they were.

7 "Q Did he tell you where they were?

8 "A I believe he said Boston. I am not sure.

9 "Q Did he give you a street address, or anything?

10 "A No.

11 "Q Did he give you a telephone number?

12 "A No, sir. He did not.

13 "Q Let me show you Government Exhibit 104 and
14 ask you if you can identify the photograph.

15 "A That looks like her.

16 "Q Again, would you speak up?

17 "A That looks like Natasha."

18 That, your Honor, is Government's Exhibit 202A.
19 At this time, your Honor, the government offers Govern-
20 ment's Exhibits 34 and 34A.

21 (At the side bar.)

22 MR. BUCHWALD: This is an exhibit which we
23 marked at the Ford trial, and I indicated at that time
24 but want to reiterate on this record, on 34A, which is
25 the check cashing privilege card at Lloyd's Department

1 Store, there is an area that appears to be erased out.
2
3 What this was, we called the witness last time, Simonds,
4 they had written on here after the State Police came around,
5 they had written armed and dangerous, notify police imme-
6 diately. Then they erased it for the trial.

7 I indicated to you at the side bar that you
8 probably didn't want to ask about that on cross examina-
9 tion. I just want to remind you on the record what that
10 erasure was. I don't intend to hand it around. I will
11 read from it and read from the back.

12 MR. CHISHOLM: Okay.

13 (In open court.)

14 (Government's Exhibits 34 and 34A were re-
15 ceived in evidence.)

16 MR. BUCHWALD: This reads as follows, ladies
17 and gentlemen. We will have witnesses in just a few
18 moments.

19 "It is hereby stipulated and agreed by and
20 between the parties that if called as a witness and sworn,
21 Mrs. Stella B. Simonds would testify as follows: Mrs.
22 Simonds is employed at Lloyd's Department Store, Lloyd's
23 Shopping Center, on Route 211 in Middletown, New York,
24 which is right across the street from the Silver Lake
25 branch of the Orange County Trust Company. Lloyd's Department

XXX

1
2 Store where she works has a practice of cashing peoples'
3 checks. Government Exhibit 34A is a check cashing card
4 for Vincent Thomas, made, kept and maintained by Lloyd's
5 Department Store in the regular course of its business.
6 Customers applied for check cashing privileges by making
7 an application in which they list their bank, employer's
8 name and other such information. Lloyd's sends a letter
9 of inquiry to the bank listed by the applicant, and if the
10 application for check cashing privileges is approved, a
11 card such as Government's Exhibit 34A is made up by
12 Lloyd's and signed by the application.

13 "As reflected on the check cashing card,
14 Vincent Thomas listed his address as 9 Midlake Park,
15 Greenwood Lake, New York. The name of his employer,
16 Charles Reid, Montvale, New Jersey, is listed on the back
17 of the card. From the top of the card Mrs. Simonds can tell
18 the check cashing privileges were approved by Lloyd's
19 Department Store for Vincent Thomas on July 9, 1971.
20 The signature in the name of Vincent Thomas appears at
21 the bottom of the card."

22 That's Government's Exhibit 34A, which is
23 referred to in the stipulation, Government's Exhibit 34.
24 The government offers Government Exhibit 36F for identi-
25 fication and also the following exhibits which are

1 lhjb 10

2 referred to in 36F, namely Government's Exhibits 36,
3 36A, 36B, 36C, 36D-1, 36D-2, 36E.

4 THE COURT: Any objection?

5 MR. CHISHOLM: No.

6 (Government's Exhibits 36 and 36A through
7 36F, inclusive, were received in evidence.)

8 MR. BUCHWALD: If I might read 36F which re-
9 fers in turn to the other documents:

10 "It is hereby stipulated and agreed by and
11 between the parties that if called as a witness and sworn,
12 Miss Carmel Dreichler, office manager of Charles J. Reid
13 Plumbing Company, Inc., whose main office is located in
14 Montvale, New Jersey, would testify that Government's
15 Exhibits 36A, 36B, 36C, 36D-1, 36D-2 and 36E, are business
16 records kept and maintained in the normal course of business
17 by Charels J. Reid Plumbing Company, Inc., that the records
18 reflect that an individual by the name of Vincent Thomas
19 was regularly employed as a plumber's helper for the
20 company from March, 1971 until October 22, 1971, his last
21 day of work. The employment records further reflect that
22 on Tuesday, October 19, 1971, Vincent Thomas worked for the
23 company on a project in Middletown, New York, but only
24 for four hours instead of his regular eight-hour shift;
25 that on Wednesday, October 20, 1971, Vincent Thomas did

not work at all, and that on Thursday and Friday, October 21st and October 22, 1971, Thomas' last two days of work, he worked at job sites other than in Middletown, namely in Lynwood, New Jersey and Pomona, New York, respectively."

If I might just at this time with respect to these exhibits direct the attention of the ladies and gentlemen of the jury to Government's Exhibit 36E which consists of various checks with check numbers, which I would ask to be individually deemed to be marked for identification as 36E followed by the check number itself, with the court's permission.

If I might direct the attention of the ladies and gentlemen of the jury to the rear of most of these pay checks, they will see the stamp that they were cashed, for deposit only, Lloyd's Shopping Center, Inc., Lloyd's Shopping Center, which is not on all but is on most of these checks, as the ladies and gentlemen of the jury can see for themselves.

THE COURT: Suppose we show the exhibits to the jury at the end during the summation.

MR. BUCHWALD: Fine.

At this time the government offers Exhibits 40, 40A, 40B, 113 and 114.

MR. CHISHOLM: No objection.

(Government's Exhibits 40, 40A, 40B, 113 and 114 were received in evidence.)

MR. BUCHWALD: If I might read these to the ladies and gentlemen of the jury, Government's Exhibit 40, which refers to 40A and 40B, reads, "It is hereby stipulated and agreed by and between the parties hereto that Government's Exhibits 40A and 40B are black and white photographs of co-defendant Richard T. Ford taken by law enforcement authorities on October 11, 1973."

Government Exhibit 113 reads as follows: "It is hereby stipulated and agreed by and between the parties hereto that Government's Exhibit 114 is a color photograph of co-defendant Richard T. Ford taken by law enforcement authorities in May, 1974."

Your Honor, what I would propose to do, perhaps with counsel's permission, is the next time we break, I would like to show or have the ladies and gentlemen of the jury be able to look at all of the various photographs next to one another, and if it is all right with counsel, perhaps that could be done during the next break. The jurors could just take the photographs in with them or else I could just line them up here, whichever counsel prefers.

MR. CHISHOLM: I'd prefer the customary way

of doing it while we are in session.

THE COURT: All right.

MR. BUCHWALD: Then if I might just line these up, to make it easier -- perhaps, Mr. Lawson, if you would help, we will start with them over here and then move down to this side, let these jurors see it first and then move on over.

With respect to the Fitzgerald ones and the Thomas ones, it might be useful to see those next to one another.

(Pause.)

MR. BUCHWALD: One of the jurors is saying something and I don't want to hear it.

THE COURT: Please don't say anything. Just look at the pictures.

MR. BUCHWALD: If I may indicate, all these items may be seen by the jurors at the end.

THE COURT: Yes.

(Pause.)

(Continued on next page.)

t3a.pm

gwjb

59

MR. BUCHWALD: At this time the government offers Exhibits 20 for identification and 71-11 for identification.

(Pause.)

THE COURT: Government's Exhibit 20 and 71-11 received.

(Government's Exhibits 20 and 71-11 received in evidence.)

MR. BUCHWALD: It would be more useful to read these at a time subsequent, when they fit into the testimony.

At this time, your Honor, the government calls Mr. Daniel Costa.

MR. CHISHOLM: Are you withdrawing these offers?

THE COURT: No, he's going to read them later. That was 20 and 71-11.

Mr. Lawson, will you see if the first witness is out there, please.

DANIEL COSTA, called as a witness by the government, after having been first duly sworn, testified as follows:

THE WITNESS: Daniel Costa, C-o-s-t-a, Massachusetts State Police officer, presently stationed

at E Troop headquarters, Massachusetts Turnpike, town of Weston, Massachusetts.

THE COURT: You may be seated.

MR. BUCHWALD: May I proceed, your Honor?

THE COURT: Yes. You may.

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q Mr. Costa, would you repeat who you are employed by?

A Massachusetts Turnpike. I'm a state police officer, employed presently by the Massachusetts Turnpike Authority.

Q How long have you been a police officer in Massachusetts?

A Approximately 28 months.

Q Let me direct your attention to February 14, 1977 at approximately 2:45 a.m.

Were you on duty on that occasion?

A Yes, I was, sir.

Q Would you explain to the ladies and gentlemen of the jury what you observed and what took place at that time?

MR. CHISHOLM: The question is very broad, your Honor. I think we should have question and answer

1
2 permissible, your Honor. We would argue that indeed the
3 entire conversation, including the statements of the
4 driver made in the passenger's presence, is admissible to
5 show the conduct and state of mind of all the people
6 present.

7 THE COURT: What do you say?

8 MR. CHISHOLM: I object, your Honor.

9 THE COURT: It is a statement made in the
10 presence of the defendant, is it not, Mr. Chisholm?

11 MR. CHISHOLM: That's what he's contending.
12 I object to the statement as evidence against this
13 defendant on trial here.

14 THE COURT: With respect to the question which
15 you just read, Mr. Reporter, and that the answer, I asked
16 the operator for the name of the passenger --

17 MR. CHISHOLM: Yes, your Honor.

18 THE COURT: The objection is overruled on
19 the ground that the question and the answer was made in
20 the presence of the defendant. The defendant has been
21 identified by the driver as the passenger in the car.

22 Overruled.

23 Q What did you do when you asked the driver,
24 Mr. Margeson, what the name of the passenger was? What
25 happened after you asked him that question?

1
2 A When I asked the operator what the name of
3 his passenger was, he looked at the passenger, he said
4 nothing, looked back at me.

5 I asked the operator again --

6 MR. CHISHOLM: I think that answered the
7 question, your Honor. I want to object to this witness
8 just narrating a story. I would like to have the oppor-
9 tunity to object to anything --

10 THE COURT: Just answer each question and
11 Mr. Buchwald will put the next question to you.

12 The question you were answering was, you
13 asked the name of the passenger of the driver, is that
14 it, and he said nothing; is that it?

15 THE WITNESS: Yes.

16
17 (Continued on next page.)
18
19
20
21
22
23
24
25

2 Q Then what happened?

3 A I asked the operator again --

4 MR. CHISHOLM: I again object to the conversa-
5 tion, your Honor.

6 THE COURT: I will overrule this objection
7 also on the same ground. The conversation was in the pre-
8 sence of the defendant and the defendant has been identi-
9 fied by the officer as being the passenger he saw in the
10 car that night.

11 Q What happened?

12 A I asked the operator once again who the passenger
13 was and the operator said it was a friend he was giving
14 a ride to.

15 Q Then what, if anything, happened?

16 A Then I asked the passenger --

17 MR. CHISHOLM: Again he is asking for events
18 and the witness is giving conversation, your Honor.

19 THE COURT: Yes. Ask the witness what occurred
20 next. He directed a question to the driver. The driver
21 answered in the presence of the defendant.

22 Overruled.

23 Q Then what happened?

24 A I asked the passenger for his name.

25 Q What, if anything, happened after you asked

1
2 the passenger for his name?

3 MR. CHISHOLM: I object.

4 THE COURT: ON what ground?

5 MR. CHISHOLM: May we approach the bench,
6 your Honor?

7 THE COURT: Yes.

8 (At the bench.)

9 MR. CHISHOLM: Your Honor, I suggest this is
10 a custodial interrogation and the defendant here, Mr. Flynn,
11 has not been advised of any rights.

12 THE COURT: At this juncture?

13 MR. CHISHOLM: Yes, your Honor. He hasn't
14 been advised of any rights. It is custodial in the sense
15 it is locomotion, restricted by the officer.

16 THE COURT: Overruled.

17 (In open court.)

18 MR. BUCHWALD: May we have the last question rea
19 back, your Honor.

20 THE COURT: Yes.

21 (Record read.)

22 Q You may answer.

23 A The passenger did say something, but I wasn't
24 sure of what he said.

25 Q Then what happened?

1 gab-3 Costa-direct 71
2 A Then I asked the passenger if he had any
3 identification on him.

4 MR. CHISHOLM: I object to the question.

5 May I have an objection to that question, your
6 Honor.

7 THE COURT: The presently pending question?

8 MR. CHISHOLM: Yes, your Honor.

9 THE COURT: Then what happened?

10 MR. CHISHOLM: Yes, your Honor.

11 THE COURT: Overruled.

12 Q What happened when you asked the passenger if
13 he had any identification on him?

14 A The passenger stated he didn't.

15 Q By "the passenger" now you are referring to who?

16 A Mr. Flynn.

17 Q All right.

18 What happened after he said that he did not
19 have any identification on him?

20 A At that time my partner, Trooper Lee walked up
21 to the operator's side. He asked if the passenger did have
22 any identification,

23 MR. CHISHOLM: I object, your Honor.

24 THE COURT: What do you say to that objection,
25 Mr. Buchwald? This is his partner now.

1
2 THE COURT: The ruling is that at the time the
3 defendant was asked that particular question, he was not
4 in custody. Let's proceed.

5 Q What if anything did Mr. Flynn say when you
6 asked him earlier in the evening if he had identification?

7 A He stated no.

8 Q No, he didn't?

9 A No, he didn't.

10 MR. CHISHOLM: Wait a minute.

11 THE COURT: Pardon me?

12 MR. CHISHOLM: I object to the comment of the
13 prosecutor.

14 THE COURT: Don't repeat the witness' answer.

15 MR. BUCHWALD: I apologize.

16 Q Mr. Costa, did you prepare or did there come
17 a time in connection with this matter when you prepared an
18 official arrest report for the Police Department of Massa-
19 chusetts?

20 A Yes, I did, sir.

21 Q Let me show you a copy of 3581B, the last
22 two pages thereof. Is that a copy of your arrest report?

23 A Yes, it is.

24 Q Referring to that where necessary to refresh
25 your recollection, do you have -- did you note how tall

Q What was said?

MR. CHISHOLM: I object.

THE COURT: Overruled.

You asked him what the defendant said?

MR. BUCHWALD: That's correct.

THE COURT: Overruled.

A When the magistrate told Mr. Flynn that an indictment had been returned against him on April 3, 1974 and that for failure to appear for an arraignment a bench warrant was issued for his arrest, Mr. Flynn said that he had never been informed that an indictment was returned against him.

MR. BUCHWALD: May I have just one moment, your Honor?

THE COURT: Yes.

(Pause.)

MR. BUCHWALD: I have no further questions of Agent Pieroni.

MR. CHISHOLM: May I have the court's indulgence for one moment?

THE COURT: Yes.

(Pause.)

gab-3

Engel-direct

1
2 Q At that time, on February 25 of this year,
3 did Mr. Flynn make certain statements in your presence
4 in response to questions asked by the Judge who was pre-
5 siding at that time?

6 A Yes, he did.

7 Q Would you tell the ladies and gentlemen of the
8 jury what those questions were, as best you recall, and what
9 Mr. Flynn's answers were?

10 MR. CHISHOLM: I object.

11 THE COURT: What is the objection?

12 MR. CHISHOLM: Relevancy.

13 THE COURT: Overruled.

14 A As I recall, the question was directed to Mr.
15 Flynn by the Court as to whether he had a job.

16 Mr. Flynn said yes, he did have a job at a firm
17 called the Millis Transportation Company in Millis,
18 Massachusetts.

19 I believe he said that he was employed by the
20 union there, or connected with the union, Local 25
21 of the Teamsters, and said that he could go back there
22 the next day and be rehired and go back to work.

23 He said, in addition, I believe, that -- he
24 said it was about three years, for the past three years he
25 had been working there.

Q Let me ask you to keep your voice up so that all the ladies and gentlemen of the jury can hear you, sir.

Where is the Middletown Savings Bank located?

A Middletown, New York.

Q And how long have you been working there?

A About four and a half years.

Q Prior to that where did you work?

A The Orange County Trust Company.

Q And were you employed at the Silver Lake branch of the Orange County Trust Company?

A Yes, I was.

Q What is your present position with the Middletown Savings Bank?

A I'm a management trainee in the mortgage department.

Q And directing your attention to October of 1971, what was your position at the Silver Lake branch of the Orange County Trust Company?

A I was a teller at the Silver Lake branch.

Q Now, Mr. Nielsen, let me direct your attention more specifically, if I might, to approximately 11:15 a.m. on the morning of October 20, 1971. Were you present in the bank on that occasion?

A Yes, I was.

Q Do you remember what day of the week that was?

A Yes. It was a Wednesday.

Q And would you describe to the ladies and gentlemen of the jury what occurred at that time, as best you recall? And let me ask you again to keep your voice up and speak slowly, if you will, so that the ladies and gentlemen can hear you.

A Okay.

I had just finished with a drive-in customer at the drive-in window, and I heard some kind of commotion going on. I turned around and I saw a man had vaulted onto the teller counter in the middle of the three lobby windows. He was masked and he had a revolver and he was saying, "This is a stickup. This is a stickup."

For a split second I thought it was some kind of joke. Then, of course, I realized very soon that it wasn't.

He motioned to the woman, the teller who normally has that window, whose back -- to turn around and come toward him --

Q Let me try to ask you to try to keep your voice up a little bit more, if you can.

A Okay. He motioned to the teller whose window that was, who had her back to the lobby, to turn around

and come toward him, and he also motioned with the revolver to myself to come toward him also.

Q Do you remember who that teller was, the woman teller?

A Yes. That was Mrs. Gennario.

Q Then what happened?

A Of course I went over there and he came down off the counter and he asked her something to the effect "Where is the money? Where is the money?" And she replied she didn't know, she didn't know where anything was.

He then ushered us both to the first gate in front of the vault, and the gate was open and he told her to go out through the second gate, on the other side of the vault, and he went with her and he left me at the first gate, and when he opened the second gate he told her to lie down on the floor near the lobby.

It was at this point that I noticed a second individual had vaulted up on the counter at the front window, which is directly behind the walk-up window. I saw him standing up, and he took the head teller in too.

Q Who was the head teller?

A That was Mrs. Nichols.

He had a handgun himself.

Then finally the first individual told me --

1 he motioned me to go toward the second gate, which I did,
2 and he told me to go outside that gate and lie down face
3 down on the floor, which I did.
4

5 As I went through the second gate, I noticed a
6 third individual in the lobby, in the middle of the lobby.
7 He had a shotgun. And then I lay down on the floor face
8 down.

9 Q Now, did you observe what happened after that
10 or did you hear anything after that?

11 A Yes, I did.

12 Q Would you explain to the ladies and gentlemen
13 of the jury what that was?

14 A Well, the second individual, the one who had
15 the head teller with him, was asking her where the money
16 was, and he was with her the whole time, apparently. They
17 went -- I could hear them go into the vault, and she was --
18 she was very upset, of course.

19 The first individual went back behind the teller
20 counter. I could hear him walking back there and I heard
21 something going on behind there.

22 And the third individual, the one with the shot-
23 gun, had remained in the lobby for a time and then at some
24 point he yelled out "Time, time," as a signal for the
25 others.

MR. CHISHOLM: Object to that last statement, your Honor.

THE COURT: Well, it just appeared to you to be a signal?

THE WITNESS: Yes, sir.

THE COURT: You can't tell us what somebody else thought.

THE WITNESS: He yelled out "Time, time." And then perhaps 15 seconds passed and he yelled out -- he repeated that. He said, "Time, time," like that.

Q This is the fellow with the shotgun.

A That's the one with the shotgun in the lobby, right.

Then a short time after that the first two individuals came through the gates and they all went out together to the door.

Q Incidentally, Mr. Nielsen, do you recall approximately how long the three men were in the back altogether?

A It was approximately two to three minutes, right around in there. It was done very quickly.

Q What was your state of mind during that time?

A I was scared to death.

Q And could you hear during the course of the robbery the reactions of any of the other employees or

customers in the bank?

A The only one I heard was Mrs. Nichols, who was with the second individual the full time, and she was -- she was crying and she was somewhat hysterical, I would say.

Q Now, if I could, let me ask you to focus in on each of these individuals one at a time.

First the man who you have been referring to as the first man, who came up initially near Mrs. Gennario and yourself. What is your best recollection as to what he looked like?

A Well, he had a ski mask on, he had a dark jacket, a short length jacket on, and he had dark pants. He was about 5'11", 6 feet tall, somewhere in there, and he had about a medium build, I'd say.

He had a revolver, a gray revolver. It had a large cylinder.

Q Do you recall whether or not he had gloves?

A No, I don't recall whether he did or not.

Q Could you tell whether it was a black man or a white man?

A Yes. He was a white man, because I noticed his eyelids.

Q Could you see that through the ski mask?

A Yes, I could.

Q Now let me direct your attention to the person you have been referring to as the second man, the one who was with Mrs. Nichols, the head teller.

A Yes.

Q What is your best recollection as to what he looked like?

A Well, he had a ski mask on also. He had dark clothing on. He also had dark pants. And he was approximately the same height.

Q Did he have any kind of weapon?

A Yes. He had a handgun. I couldn't tell whether it was a revolver, automatic or what.

Q And what about the third man whom you observed? Where was the third man standing?

A He was right in the center of the lobby.

Q And did he have a weapon?

A Yes. He had a shotgun.

Q And what is your best recollection as to what he looked like?

A Well, he was quite a bit shorter. He was maybe 5'6", 5'7", somewhere in there. He had -- he didn't have a ski mask on. He had like a Halloween mask. And he had about a knee length coat on.

Q Could you tell what kind of shotgun it was?

gab-8

Heath-direct

1
2 A Yes, she rose from the floor near her desk chair
3 and peered out through a set of closed drapes.

4 Q Do you remember anything about the license
5 number that she yelled out?

6 A Just she said, "Jersey DOD or TOT". I
7 couldn't elaborate on the number, though.

8 Q Does the bank itself or did it in October of
9 1971 have any surveillance cameras?

10 A No.

11 Q There were no pictures taken during the robbery?

12 A No.

13 Q Did it have an alarm system?

14 A Yes, there was an alarm system.

15 Q Following the robbery, Mr. Heath, did there
16 come a time, I take it -- were the police contacted?

17 A Yes, they showed up very soon after the departure
18 of the three men.

19 Q Were you able to determine how much money
20 was taken from the bank?

21 A Given time, our auditor appeared from the main
22 office and performed a cash count of all the teller stations.

23 Q How much money was taken altogether?

24 A There was a total of \$203,938, I believe. I am
25 rounding the figures.

gab-9

Heath-direct

1 Q Let me show you what has been marked as Govern-
2
3 ment Exhibit 2 for identification.

4 Is that a copy of the audit report?

5 A It is an interoffice memo signed by Edwin L.
6 Eklund, our auditor, yes.

7 Q Does that reflect the total amount taken?

8 A That does, yes.

9 Q What was the breakdown of the amount between
10 the cash in the drawers and other money ?

11 A Of the amount stolen?

12 Q Stolen.

13 A There was a shipment prepared for pickup by
14 Brink's armored truck contained in two large canvas bags
15 and that amounted to \$190,400, and then one of the teller
16 stations contained 13,538 as shown by the audit, as being
17 short, so the total was \$203,937.32.

18 Q Was any of that money ever recovered?

19 A No.

20 Q Was it normal for the bank to have that much
21 cash around in the mornings?

22 A There was on Wednesday, which was the normal
23 pickup by Brink's armored carrier dispatch by Federal
24 Reserve Bank in New York.

25 Q Would you explain to the ladies and gentlemen

1
2 A I saw one other party, and he was jumping
3 over the counter, over the teller counter.

4 Q What happened after you got down on the floor?

5 A Well, I laid there and then I realized that they
6 were leaving the building, and I guess even before that I
7 realized that the car was right directly in front of me
8 outside of the window. When they left and they got in
9 the car, then I crawled over and peaked under the drapes
10 and saw the car speed away, and I watched it as far as
11 I could and then it disappeared.

12 Q What road was it going up on?

13 A Fitzgerald Drive.

14 Q Where is your desk in relation to the drapes,
15 the window that faces Fitzgerald Drive?

16 A My desk was right by the window, right in front
17 of the window.

18 Q What, if anything, did you do when you observed
19 the car -- were you still on your hands and knees?

20 A Yes.

21 Q What did you do when you looked through the
22 window and you saw the car --

23 A As I saw the car go, I called off the license
24 plate number.

25 Q Do you remember what kind of license it was?

gab-4

Bambakos-direct

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A It was Jersey, New Jersey license.

Q Do you remember the number that you called off?

A I do not.

Q Do you remember anything else about the number?

A I think there were three letters and three numbers, but -- I think that's what it was.

Q Later that day, after the robbery, did police officers and State police and FBI agents show up at the bank?

A Yes.

Q All right.

Did you give the license number, as best you recalled it, to the officers and the policemen?

A Yes.

Q Did the police officers ask you to sign a statement that was prepared shortly after the robbery?

A Yes.

Q Let me show you what has previously been marked as Government Exhibit 6 for identification, which for purposes of the record is also 3506E, and is this the statement which was prepared and which you signed?

A That's my signature.

Q All right.

gab-7

Holik-direct

A That's correct, sir.

Q After you left the high school parking lot -- where is the parking lot in relation to the high school itself?

A It is on the side, in the back, in the back of the high school.

Q All right.

Do you have to cross a street?

A From the high school?

Q Yes.

A Yes, sir.

Q Where did you go from the high school parking lot?

A I wound up from the high school parking lot at a food store parking lot in the city of Middletown. That's the Acme Food Store in the city.

Q What, if anything, did you do at the Acme Food Store parking lot?

A I was shown another -- a car, and was told to process that car also.

Q All right.

Let me show you, if I might, Government Exhibit 72-1E and 72-1D for identification.

A Yes, sir. These pictures were taken by me of

1 that car at the Acme parking lot.

2 Q All right. Do they accurately portray the
3 car that you processed at the Acme parking lot?

4 A Yes, sir.

5 Q Did you eventually take that car also to the
6 State police barracks?

7 A Yes, sir.

8 Q Let me show you Government Exhibit 71-1, 1B
9 and 1C for identification.

10 Are these photographs of the same car after
11 it was taken back to the State Police barracks?

12 A Yes, sir, they are.

13 MR. BUCHWALD: Your Honor, at this time the
14 Government offers Exhibits 71-1A, 1B, 1C, 1D and 1E
15 for identification.

16 (Pause.)

17 MR. BUCHWALD: In addition, your Honor, at this
18 time we will also offer Government Exhibits 72-4, 72-5A, 5B,
19 5C, 5D, 72-6 and 72-7.

20 THE COURT: All right, let's take the first
21 group. 71-1A, B, C, D and E.

22 Is there any objection?

23 MR. CHISHOLM: No, your Honor.

24 THE COURT: Received.

gab-9

Holik-direct

xxx

(Government Exhibits 71-1A, B, C, D and E, respectively, were received in evidence.)

THE COURT: The second group was what again?

MR. BUCHWALD: 72-4, 72-5A, 5B, 5C, 5D.

THE COURT: Any objection to those exhibits?

MR. CHISHOLM: Not to that series, your Honor.

THE COURT: Received.

xxx

(Government Exhibit 72-4, 72-5A, 5B, 5C and 5D were received in evidence.)

MR. BUCHWALD: 72-6 and 72-7.

THE COURT: Any objection to 72-6 and 72-7?

MR. CHISHOLM: No, your Honor.

THE COURT: Received.

xxx

(Government Exhibits 72-6 and 72-7 were received in evidence.)

Q Let me also show you again Government Exhibit 3512A for identification.

Does that refresh your recollection as to the color of the first car which you searched and vacuumed and dusted by the high school?

A Yes, sir. It's brown over beige.

Q With respect to this second automobile that you processed at the Acme shopping center, let me show you first Government Exhibit 71-1E. I take it this is a picture

1 gab-10

Holik-direct

2 of the automobile?

3 A Yes, sir.

4 Q Who is the individual in uniform behind the
5 automobile?

6 A That is Trooper ^{Koenig}~~Cohen~~.

7 Q And 71-1D, can you see the license plate
8 depicted on this automobile?

9 A Yes, sir.

10 Q What was the license plate?

11 A New York State 4132AZ.

12 Q Again, was there only one license plate on the
13 automobile and not two?

14 A That's correct, only in the rear.

15 MR. BUCHWALD: Mr. Lawson, if you would show
16 these two photographs, first the one with the individual, Mr.
17 ^{Koenig}~~Cohen~~, depicted in the back, and then from the opposite
18 side with the license plate showing.

19 (Pause.)

20 Q Let me just drop these here for a minute. I
21 think it will be easier from hopping back and forth. I will
22 ask you all the questions at once.

23 When you got to the automobile at the Acme
24 shopping center, I take it that you also searched and
25 processed that automobile, is that correct?

gab-11

Holik-direct

1
2 A That is correct.

3 Q What items did you find in that automobile?

4 A I lifted one latent fingerprint, secured a
5 registration from the glove compartment of that car, again
6 vacuumed the inside of the vehicle, secured the rear New
7 York State plate and took two Massachusetts plates out
8 of the trunk.

9 Q All right. Let me go through those. Let me
10 direct your attention to Government Exhibit 71-3A, 71-3B.

11 A Yes, sir.

12 Q All right. Are those the Massachusetts license
13 plates which you found in the trunk of that automobile?

14 A Yes, sir.

15 Q What is the license number on those Massachusetts
16 license plates?

17 A 43965F.

18 Q Would you hold those up so the ladies and
19 gentlemen --

20 MR. BUCHWALD: Let me offer those in evidence.

21 THE COURT: What are the numbers on there?

22 MR. BUCHWALD: 71-3A and 3B.

23 THE COURT: Any objection?

24 MR. CHISHOLM: Not to the plates, your Honor.
25 I don't know about the tag.

1 Q Is that your evidence tag on there?

2 A Yes, sir.

3 Q And your initials and date?

4 A Yes, sir.

5 THE COURT: Any other objection?

6 MR. CHISHOLM: No, your Honor.

7 THE COURT: Received.

8 (Government Exhibits 71-3A and 3B were received
9 in evidence.)
10

11 Q I believe you mentioned some other items.

12 Did you take the license plate off of that
13 automobile?

14 A Yes, sir.

15 Q Is that in front of you?

16 A Yes, sir.

17 Q Directing your attention to Government Exhibit
18 71-2, is that the same license plate as is depicted in
19 the photograph --

20 A Yes, sir.

21 Q -- which has been shown to the jury?

22 A Yes, sir.

23 MR. BUCHWALD: The Government offers 71-2
24 into evidence.

25 MR. CHISHOLM: I have no objection.

THE COURT: Received.

(Government Exhibit 71-2 for identification
was received in evidence.)

Q I believe you also indicated you found a
registration in the automobile.

A That is correct, sir. That was a Massachusetts
registration certificate and it was made out to Hertz
Rent-a-Car.

Q Was that for the same registration, 43965F?

A I'm not positive on that.

Q Where did you find that registration?

A The registration was in the glove compartment
of that blue Plymouth.

Q Did you also take sweepings from that automobile?

A Yes, sir.

Q Do you have that in front of you, the sweepings?

A Yes.

Q What is the exhibit number?

A 71-5.

Q Are you able to identify Government Exhibit
71-5?

A That is the same type of bag, but I can't see
my initials on it. It is packed, but I can't --

Q Why don't you try to squeeze it around inside

Tk 2 AM

gab-1

Whooley-direct

305

1
2 Q Incidentally, the automobile that you saw on
3 the morning of October 20, were you ever shown that auto-
4 mobile again?

5 A Yes.

6 Q Who showed the car to you?

7 A BCI and the FBI at the Acme Supermarket.

8 Q The BCI is the Bureau of Criminal Investigation,
9 New York State Police?

10 A Yes, sir.

11 Q Were you able to identify the car at that time?

12 A Yes.

13 Q Was it the same automobile that you had seen?

14 A Yes.

15 MR. BUCHWALD: Mr. Lawson, if you would show
16 the witness Government Exhibit 72-1D.

17 Q Is that a photograph of the car which you saw?

18 A Yes.

19 Q I would like you, if you would, to look around
20 the courtroom and tell us if you see any of the occupants
21 of the car who you may have had an opportunity to observe
22 on that day?

23 A No.

24 Q Let me ask you, the driver of the car, can you
25 describe what he looked like, as best you recall?

1 gab-2

Whooley-direct

2 A He had dark hair and a white male -- rather
3 thin features.

4 THE COURT: Read the question and the answer,
5 please.

6 (Record read.)

7 Q Was there ever a time when you were able to
8 pick out a photograph of the individual who you believed
9 to be the driver of the automobile?

10 A Yes.

11 Q Do you remember the date on which you picked
12 out the photograph of the driver?

13 A No, I don't.

14 Q At that time when you picked out the photograph
15 of the driver, were you shown only one photograph?

16 A No, I was shown a series of photographs.

17 Q Were all these pictures of white adult males?

18 A Yes.

19 Q Who asked you to look at the pictures, if you
20 recall?

21 A An FBI agent and one of the BCI agents.

22 Q Were you told at that time -- what, if anything,
23 was said to you when you were shown the photographs?

24 A I looked at the photographs and I picked out
25 one.

gab-3

Whooley-direct

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q Did any of the State police or the FBI people who showed you the pictures say that a picture of one of the men of the car is in this group, or anything like that?

A No.

Q They just showed you the spread of photographs?

A Yes.

Q Were you able to pick out one of them and identify him as the driver?

A Yes.

Q After you picked out the photograph, did you make any notations or anything on the photograph?

A I put my -- I think my initials at the back.

Q Let me show you what has previously been marked as Government Exhibit 9, if I might. These are photographs of white adult males, are they not?

A Yes.

MR. BUCHWALD: Your Honor, these are numbered 1 through 14. If they might be deemed to be marked as Government Exhibits 9-1 through 14, respectively, for identification.

THE COURT: 9-?

MR. BUCHWALD: Collectively as Government Exhibit 9, and individually as 9-1 through 9-14.

THE COURT: Yes.

gab-4

Whooley-direct

1 gab-4 Whooley-direct
2 Q I would like to show you these one at a time.
3 Take a look at all of them.

4 Are you able to identify the picture of the
5 driver of the automobile?

6 A Yes, this one.

7 MR. BUCHWALD: Mr. Chisholm, do you want to
8 see this?

9 (Pause.)

10 Q Would you point to that again?

11 A This one.

12 MR. BUCHWALD: Your Honor, may the record
13 reflect that this is Government Exhibit 9-3 for identifica-
14 tion.

15 THE COURT: Yes.

16 Q Turning that over --

17 A My initials.

18 Q -- are those your initials "C.A.W."?

19 A Yes.

20 Q What is the date?

21 A 11/5.

22 Q Keep your voice up, please.

23 A 11/5.

24 Q 11/5, what year?

25 A '71.

1
2 Q All right.

3 Who wrote 11/5/71?

4 A I did.

5 Q All right.

6 Is this the photograph you were able to identify
7 as the photograph of the driver on 11/5/71?

8 A Yes.

9 MR. BUCHWALD: Your Honor, at this time the
10 Government offers Government Exhibit 9-3 for identification.

11 THE COURT: Any objection?

12 MR. BUCHWALD: If we might approach the side
13 bar, your Honor.

14 THE COURT: Yes.

15 (At the side bar.)

16 MR. BUCHWALD: Your Honor, at the last trial
17 your Honor may recall that part of the defense strategy
18 was -- I think I speak correctly -- was that they didn't
19 mind the fact that Mr. Ford's record would become apparent
20 to the jury because they wanted to explain the fact of
21 flight and aliases. We had prepared and offered at that
22 time to substitute either of two other redacted photographs
23 for this photograph.

24 THE COURT: For 9-3?

25 MR. BUCHWALD: Yes, as 9-3A, one of which would

gab-6

Whooley-direct

1
2 have Mr. Ford's name. Is that something that Mr. Chisholm
3 might want to cross-examine on? This photograph, unlike
4 the others, has the name of the individual, one of which
5 is without Mr. Ford's name. If Mr. Chisholm feels
6 that the fact of the name would be suggestive of a record --
7 Mr. Chisholm has not disclosed to me what his strategy is
8 in this case with respect to Ford's record.

9 So we have prepared these all for whatever his
10 desire is in the matter.

11 THE COURT: All right.

12 MR. CHISHOLM: That non-disclosure of strategy
13 is reciprocal, your Honor. I didn't get his either.

14 As far as the suggested substitution, I suppose
15 9-3A is, you know, all right from my point of view.

16 MR. BUCHWALD: What I would ask your Honor is
17 that we indicate, in order to keep the spread intact --
18 we have a copy of the photograph, which we will mark as 9-3A
19 and put in evidence, and we will explain the reason why
20 the initials and the date are not on this one, and it will
21 be stipulated that the initials and the date were on the
22 other one.

23 MR. CHISHOLM: That is no problem.

24 MR. BUCHWALD: All right? We will see that the
25 initials and date were on the original.

gab-7

Whooley-direct

1
2 THE COURT: Why don't we just show 9-3A to
3 the witness and ask her if it is the same picture as
4 that on which her initials appear? We will admit 9-3A.

5 MR. BUCHWALD: I am not sure what she is going
6 to say. I think we might prefer to do it by way of stipu-
7 lation rather than asking her to elaborate more on it.

8 MR. CHISHOLM: You are afraid what she will
9 say?

10 MR. BUCHWALD: I don't know. She is not a
11 police officer.

12 THE COURT: We can ask her: This is a copy, is
13 it not, of the picture that you picked out? Look at it
14 carefully.

15 MR. BUCHWALD: Okay. I will say yes or no.

16 MR. CHISHOLM: She will say yes or no.

17 MR. BUCHWALD: Let me direct her to answer yes
18 or no.

19 THE COURT: All right.

20 MR. CHISHOLM: I don't know what he is
21 afraid of, Judge.

22 THE COURT: Then if it is not, we will have to
23 put in the original, the one she did pick out.

24 (In open court.)

25 Q Miss Whooley, let me show you what has been

1 gab-8

Whooley-direct

2 marked as Government Exhibit 9-3A. Yes or no, Miss Whooley,
3 is this the same photograph of the same individual
4 as you d out from the photo spread and which was
5 Govern exhibit 9-3? Yes or no.

6 A Yes.

7 MR. BUCHWALD: At this time, your Honor, the
8 Government in order to keep the spread intact and together
9 will offer Government Exhibit 9-3A, which is the duplicate
10 of Government Exhibit 9-3.

11 THE COURT: All right. Received without objec-
12 tion.

13 (Government Exhibit 9-3A for identification
14 was received in evidence.)

15 Q If I might just collect the spread to keep this
16 intact.

17 Incidentally, Government Exhibit 9-3A has
18 a name on the bottom of it, does it not?

19 A Yes.

20 Q What is that name?

21 A Richard Thomson Ford.

22 Q At any time prior to your originally seeing the
23 spread of photographs from which you picked a photograph
24 of the automobile, at any time prior to that did anyone,
25 FBI agent, State police officer or anyone ever mention

xxx

1
2 A Yes.

3 Q The one in the back seat is the one that you
4 did the composite of?

5 A Yes.

6 MR. CHISHOLM: May I show these three photo-
7 graphs to the jury, your Honor?

8 THE COURT: Yes.

9 (Pause.)

10 Q Of the three photographs that you have picked
11 out as resembling the person in the rear seat, which one
12 would you say is closer in resemblance, closest in resemb-
13 lance to the composite which is Exhibit 8?

14 A This one.

15 Q You say Exhibit 9-4?

16 A Yes.

17 Q Included in this group is Exhibit 9-2, is it not?

18 A Yes.

19 q The name of that individual is?

20 A James Patrick Flynn.

21 THE COURT: Was the jury able to hear that?
22 Read it, Mr. Reporter.

23 (Record read.)

24 Q Mrs. Whooley, at a later date, after you were
25 shown the group of 14 photographs two or three weeks later,

Avenue.

Q Will you explain to the ladies and gentlemen of the jury what you observed at that time, as best you recall?

A I was eating lunch. I had backed the car into the spot when a tan-colored Plymouth came into the parking lot at a higher rate of speed than normal, it went up past my view and within seconds or so another car came out. There were a couple of things about the cars that caught my eye. I thought that the car possibly might have been stolen at the time.

The car that came in had Jersey plates and had a New York inspection sticker on it. The car that left had what I thought was a commercial plate, it looked like a commercial plate which they don't use on regular passenger vehicles.

MR. CHISHOLM: I can't hear him.

THE COURT: You have to keep your voice up.

THE WITNESS: I'm sorry.

THE COURT: Read the question and the answer, Mr. Reporter.

(Record read.)

Q Continue.

A I then called the police from the school telling

1
2 them that I --

3 MR. CHISHOLM: No, I object to what he told the
4 police.

5 THE COURT: On what ground?

6 MR. CHISHOLM: It's hearsay.

7 THE COURT: Overruled.

8 The witness is telling us what he told the
9 police. He's here to be cross-examined as to what he
10 told the police.

11 Overruled.

12 A I called the Middletown police from the high
13 school and told them that I thought I had seen a stolen
14 car and would they send a car down to check it out.

15 I left the school and ran into one of the
16 officers that make regular patrols around the school,
17 pointed out the car to him, and within a few minutes or so
18 there were State police there and Middletown police.

19 Q All right.

20 Mr. McCoy, let me back you up just a bit.

21 The first car that drove in, Mr. McCoy, where
22 were you and the car that you were having lunch in in
23 relation to this car as it drove into the parking lot?

24 A I was in the first space in the parking lot
25 near the entrance, backed in. So both cars had to go

1
2 past me. The one that came in had to go past me and the
3 one that came out had to stop in front of me and then leave.

4 Q Could you see where the first car, the one that
5 came into the parking lot, where did it go in relation
6 to where you were?

7 A Well, if I was sitting here, it would be to
8 my right, on the same aisle that I was parked in.

9 Q All right. Do you know about how far down it
10 went?

11 A A little better than half of the parking lot.
12 About halfway down of the lane.

13 Q Where did the second car come from that passed
14 you on the way out?

15 A The same area.

16 Q What was the color of the second car?

17 A It was a blue sedan.

18 Q The car that came out, did it go straight out,
19 did it stop? What happened?

20 A The car that went out had to stop in front of me
21 being as I was parked just before the entrance and exit
22 to the parking lot.

23 It had to stop for traffic and then it turned.
24 It would be left.

25 Q Could you see how many occupants were in the

1
2 car that came in?

3 A I didn't pay much mind to the occupants. There
4 were three in the car. As far as knowing how they were
5 in on the way in, no, I didn't pay that much mind to it.

6 Q How many occupants were in the car that came
7 out?

8 A Three. Two in the front, one in the back.

9 Q Did you make any notations about the car that
10 came out?

11 A Yes, I did. I jotted the number of the license
12 plate down on a napkin, which I later gave to police.

13 Q What is the name of the street that is between
14 the high school itself and the high school parking lot?

15 A Irwin Avenue.

16 Q You said you were the first car in the parking
17 lot next to the street.

18 About how far is that from the street?

19 A Maybe five to seven feet.

20
21 (continued on next page.)

22 d 8 AM
23
24
25

1
2 Q Let me ask you, Mr. McCoy, to look around the
3 courtroom, if you will, and tell us if you are able to
4 identify any of the individuals you saw on October 20,
5 1971.

6 A This gentleman here bears a resemblance, but
7 I can't be sure.

8 Q Which gentleman?

9 A The gentleman in the brown and tan jacket bears
10 a resemblance, but I can't be positive.

11 MR. BUCHWALD: May the record reflect who the
12 witness has been pointing to, your Honor?

13 THE COURT: Who are you pointing to?

14 THE WITNESS: The gentleman in the white
15 shirt, brown and gray and white jacket.

16 MR. BUCHWALD: May the record reflect that the
17 witness is pointing to the defendant.

18 THE COURT: Yes.

19 Excuse me, Mr. Buchwald. We are going to
20 recess now until two o'clock for lunch.

21 The jury is excused. Everyone in the courtroom
22 remain seated until the jurors have left.

23 Two o'clock, ladies and gentlemen. The
24 witness is excused until two o'clock.

25 (Jury absent.)

1
2 given to the FBI office in Boston to serve on an individual?

3 A Yes.

4 Q Who was the individual who was to be served?

5 A James Flynn.

6 Q Pursuant to that subpoena did there come a time,
7 Mr.Rakoff, when Mr.Flynn appeared in New York?

8 A Yes.

9 Q Did you see him at that time?

10 A Yes, I did.

11 Q Would you look around the courtroom and if
12 you see Mr. Flynn, would you point him out to the ladies
13 and gentlemen of the jury.

14 A Well, the gentleman sitting next to Mr. Chisholm
15 appears to be similar. However, the man that I observed
16 at the time did not have a moustache, as I recall.

17 Q Did Mr. Flynn appear alone or with anyone
18 else?

19 A He appeared with Mr. Chisholm.

20 Q What day did Mr. Flynn appear?

21 A March 6, 1974.

22 Q At that time did you explain to him that he was
23 a suspect in the robbery?

24 MR. BUCHWALD: May I approach the bench, your
25 Honor?

1
2 A No.

3 Q Was Mr. Flynn also photographed on that day?

4 A Yes, photographs and fingerprints --

5 MR. CHISHOLM: The answer is yes.

6 THE WITNESS: I am sorry, yes.

7 Q Was he fingerprinted?

8 A Yes.

9 Q Were there handwriting samples obtained?

10 A Yes.

11 Q Let me show you Government Exhibit 29A.

12 A Yes. That is Mr. Flynn, as I recall him, and
13 as he looked that day. I'm pretty sure that's one of
14 the photographs that was taken right then and there.

15 Q All right. At that time, as you indicated,
16 he had no moustache?

17 A That's right.

18 Q This now was on March 8 of 1974?

19 A That's right.

20 Q You don't have a photograph, I take it, of Mr.
21 Flynn in 1971?

22 A No.

23 Q Let me direct your attention to the indictment
24 in this case.

25 Do you recall what day the indictment was

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

filed?

A April 3, 1974.

Q Incidentally, after the physical exemplars were obtained from Mr. Flynn, I take it Mr. Flynn and Mr. Chisholm left to go back to where they came from?

A Yes.

Q As of March 8, 1974, when Mr. Chisholm and Mr. Flynn were down here in New York, and April 3, '74, when the indictment was voted -- do you know Richard Ford?

A Yes.

Q Was he at that time already in the physical custody of law enforcement authorities?

A Yes.

MR. CHISHOLM: I object.

THE COURT: What is the objection?

MR. CHISHOLM: It is not relevant, your Honor.

THE COURT: Overruled.

A Yes, he was.

Q All right.

Do you know when Ford was arrested?

A I --

MR. CHISHOLM: I object. He doesn't have personal knowledge of any of this, your Honor. It is very obvious, unless he was present when someone was arrested.

1
2 THE COURT: What do you say to the objection?

3 MR. BUCHWALD: I will call the witness then
4 on that point, your Honor.

5 I will withdraw the question, your Honor.

6 Q Let me show you Government Exhibits 40A and
7 40B for identification.

8 Can you identify those?

9 A Those are pictures of Mr. Ford that were a part
10 of the file that the FBI gave to me in connection with the
11 investigation of this case.

12 Q All right.

13 Let me also show you Government Exhibit 114.

14 Was that a photograph of Mr. Ford taken in
15 New York in May 1974?

16 A Yes, and I believe I was present when this was
17 taken in connection with -- well, I'm not certain of that.
18 Let me just say it is certainly a picture of Mr. Ford
19 as I observed him at that time.

20 Q Was this how he looked at the time you saw him
21 in May of '74?

22 A Yes.

23 Q Government Exhibits 40A and 40B of Mr. Ford have
24 the notation "FBI Chicago, October 11, 1973".

25 Do you know when Mr. Ford was arrested?

1
2 A Well --

3 MR. CHISHOLM: I object unless he was present.

4 MR. BUCHWALD: I will withdraw the question.

5 THE COURT: He could learn that, couldn't he,
6 as an investigator of this case from the official records?

7 MR. BUCHWALD: I am sure I could establish it
8 by asking Mr. Rakoff a series of questions. If Mr.
9 Chisholm prefers, I will have a witness here on that point.

10 Q As of the day of the filing of this indictment,
11 April 3, 1974 -- yes or no, Mr. Rakoff -- do you know
12 whether or not Mr. Chisholm had been advised that the other
13 defendant, Richard Ford, was already in custody?

14 A Yes.

15 Q On April 3, 1974, when the grand jury filed
16 the indictment in which both Mr. Flynn and Mr. Ford were
17 named, did you notify anyone?

18 A Yes, I made a phone call to Boston to Mr.
19 Chisholm and told him that Mr. Flynn had been indicted and
20 told him that he would have to appear, that is to say, Mr.
21 Flynn would have to appear for an arraignment on the 15th of
22 April.

23 Q Let me show you this, Mr. Rakoff, Government
24 Exhibit 47 for identification.

25 Can you identify that item?

1
2 A Yes, that's my file copy of a letter I sent to
3 Mr. Chisholm.

4 Q When was that letter sent?

5 A The next day, April 4, 1974.

6 Q Was that to confirm the telephone conversation
7 of the preceding day?

8 A That's correct.

9 Q All right.

10 MR. BUCHWALD: Your Honor, may I approach the
11 bench again?

12 THE COURT: Yes.

13 (At the side bar.)

14 MR. BUCHWALD: Your Honor, in lieu of offering
15 the letter which I have previously shown to Mr. Chisholm,
16 which makes references to Mr. Chisholm's representation
17 of Ford as well as Flynn, we have agreed that rather than
18 offering the letter, we are simply going to read portions
19 which only pertain to Flynn.

20 THE COURT: All right.

21 MR. BUCHWALD: Without actually formally offering
22 the letter.

23 MR. CHISHOLM: Yes, I agreed to the form sug-
24 gested by Mr. Buchwald. I object to the admissibility of
25 it on the ground that it doesn't show notice to Ford or

Flynn.

THE COURT: This goes to the issue of flight again, doesn't it?

MR. CHISHOLM: Yes, your Honor. I am objecting to it that it does not show, you know, notice or receipt by Mr. Flynn.

If your Honor is inclined to admit it, I agree to the form suggested by Mr. Buchwald.

THE COURT: It is admissible on the issue of flight. The objection is overruled. The form suggested will be followed.

(In open court.)

Q Directing your attention to Government Exhibit 47 for identification, the April 4, 1974, letter to Mr. Chisholm, who and where was it addressed to?

A It was addressed to Ronald J. Chisholm, Esq., 3 Centre Plaza, Boston, Massachusetts, 02108.

Q Was there a subject listed on top of the letter?

A It says "Re: United States vs. James Patrick Flynn and Richard Thomson Ford, 74 Cr. 336."

Q Is that the indictment number in this case?

A That's correct.

Q I would like to read a portion of this, if

I might, Mr. Rakoff. As follows:

"Dear Mr.Chisholm:

"This will confirm our telephone conversation of Wednesday afternoon, April 3, 1974, in which I informed you that the above-entitled four count indictment was voted and filed Wednesday morning here in the Southern District of New York. A copy of the indictment is here enclosed. It supersedes Indictment 74 Cr. 279, which named defendant Ford alone. Under the rules of the Court here, the new indictment is assigned for all purposes to the same Judge to whom the prior indictment had been assigned, in this case Judge Bauman.

"As I mentioned, arraignment on the indictment has been calendared before Judge Bauman for 9:30 A.M. on Monday, April 15, 1974, in Room 2804 of the United States Courthouse in Manhattan."

Have I correctly read that portion of the letter, Mr.Rakoff?

A You have.

(continued on next page.)

End 5

2 Q Now, what does it mean to be formally arraigned?

3 A It means you have to come in and enter a plea
4 of either guilty or not guilty, and bail is set, and if
5 you don't have counsel, counsel is appointed or retained,
6 as the case may be, and other preliminary matters of that
7 kind are undertaken at that time by the court.

8 THE COURT: Keep your voice up so that the
9 jury can hear you.

10 THE WITNESS: I am sorry, your Honor.

11 Q And am I correct that you were here ^{IRM}confessing
12 with Mr. Chisholm that the arraignment in this case had
13 been calendared at 9:30 a.m. on Monday, April 15th?

14 A Right.

15 Q And that you were giving the room number, num-
16 ber 2804, in this Court House?

17 A Right.

18 Q Then did you go on to say, "A formal summons
19 will be sent to defendant Flynn."?

20 A Yes.

21 Q And would you explain to the ladies and gentlemen
22 of the jury what a formal summons is?

23 A A formal summons is a document that directs the
24 defendant to appear at the time of arraignment and notify
25 him that failure to appear is a punishable offense.

Q Now let me -- incidentally, this letter which you sent to Mr. Chisholm, did you send any copies of that letter to anyone else?

A Yes. I sent a copy --

MR. CHISHOLM: All right. Yes.

Q Who else did you send a copy of the letter to?

MR. CHISHOLM: I object for the same reasons stated at the side bar, the most recent side bar conference, your Honor.

THE COURT: Overruled.

A I sent a copy to James Patrick Flynn.

Q At what address, Mr. Rakoff?

A 115 Hibiscus, Weymouth, Massachusetts.

Q That is H-i-b-i-s-c-u-s?

A Yes.

Q Did you also send a copy of the letter to Judge Bauman in this Court House?

A I did. And he appeared.

Q Now let me show you Government's Exhibit 48 for identification (handing).

Can you identify what Government's Exhibit 48 for identification is?

A That's my ^{file} final copy of the formal summons sent to Mr. Flynn.

1
2 Q And would you explain to the ladies and gentle-
3 men of the jury how that formal summons is prepared and
4 who prepares it and sends it out?

5 A Well, I wrote out on a piece of yellow paper
6 the name of the case and the name of the defendant and
7 his address, and I then gave it to our criminal clerk's
8 office, and from that information they typed up this formal
9 summons, and then they sent me back my file copy plus a
10 second copy that wasn't used that would go to the bail
11 bondsman if there had been a bail bondsman in the case
12 already.

13 Q And how many copies are prepared and actually
14 mailed out?

15 A Well, in addition to these two that are pre-
16 pared, two others are prepared, one that goes out to the
17 defendant, in this case Mr. Flynn, and one that goes out to
18 his attorney, in this case Mr. Chisholm.

19 MR. BUCHWALD: The government offers Govern-
20 ment's Exhibit 48 for identification into evidence.

21 MR. CHISHOLM: I object. I object, your Honor.

22 THE COURT: What ground?

23 MR. CHISHOLM: The same grounds stated at the
24 side bar at our most recent side bar conference.

25 THE COURT: All right. Overruled.

What number is that?

MR. BUCHWALD: That is 48, your Honor.

THE COURT: Received.

(Government's Exhibit No. 48 received in evidence.)

MR. BUCHWALD: If I might just read the address here again.

James Patrick Flynn, 115 Hibiscus, Weymouth, Massachusetts.

Then it sets Monday, April 15, 1974 before Judge Hon. Arnold Bauman, U.S. District Judge, Room 2804 as the place and time of the arraignment.

Q Is that correct?

A That's right.

Q And it also says right on the face of it, "Failure to appear will result in the forfeiture of bail, the issuance of a warrant of arrest or additional prosecution pursuant to 18 U.S.C. 3150."

Q Is that correct?

A That's right.

Q Am I correct that the copy to the surety here is not mailed out because there was no bail yet in this case?

A That's correct.

Q In fact, the time for bail would be the arraignment, April 15th of 1974, is that correct?

A In this kind of situation, yes.

Q And that would have been the time that the defendant pleads guilty or not guilty and bail is set?

MR. CHISHOLM: I object.

THE COURT: What is the objection?

MR. CHISHOLM: He is talking that that would be the time and possibilities.

THE COURT: Overruled.

A Yes.

Q And April 15th was scheduled for the day for that to happen?

A Right.

Q Incidentally, on the top of this, in the left-hand corner, is the name Rakoff, R-a-k-o-f-f, which is your name.

Is that there to designate that you are the individual who provided the information, the address of the defendant and the attorney, to the Criminal Court offices?

A Yes.

Q And then there are the initials of MB.

Do you know who MB is?

A I think that probably would have been Manny

Bermudas, who at that time worked in our criminal clerk's office.

Q Mr. Rakoff, let me direct your attention to April 15, 1974, the day scheduled for the arraignment of the defendants before Judge Bauman.

First let me ask you, was the co-defendant Ford arraigned that day?

A Yes.

Q And am I correct that he was in custody already?

A That's correct.

Q He really had no choice in the matter?

MR. CHISHOLM: Now wait a minute. I move that last comment be struck.

THE COURT: Yes.

Q What about the defendant Flynn, did he show up in court?

A He did not.

Q At any time during the day?

A He did not.

Q What about his attorney, Mr. Chisholm, who also received a copy of the April 4th letter and the notice?

A He did.

MR. CHISHOLM: Wait. Wait a minute.

I object.

THE COURT: Sustained.

Q Did Mr. Chisholm show up on April 15th?

A Yes, he did.

THE COURT: I thought that was the same question.

MR. BUCHWALD: I think the objection was to form.

THE COURT: It is not the same question.

Well, at least there is no objection.

MR. ^{CHISHOLM} BUCHWALD: I don't object to the second one.

I did object to the next prior question, your Honor. It had different connotations in it.

THE COURT: I see.

Q So Mr. Chisholm did show up, but Mr. Flynn did not?

A That's right.

Q During the course of the proceeding before Judge Bauman, did Mr. Chisholm state the last address for Mr. Flynn?

A Yes.

Q And what was the last address that Mr. Chisholm had which he stated to the court?

A It's that same address on Hibiscus in Weymouth, Massachusetts.

Q You say Hibiscus address in Weymouth, Massachusetts?

1
2 A Yes.

3 Q And did Mr. Chisholm say whether or not he
4 knew of any newer address for Mr. Flynn?

5 A He was asked, and he said that he did not know
6 any more -- any other or newer address for Mr. Flynn.

7 Q What happened when Flynn failed to appear at any
8 time that day before Judge Bauman?

9 MR. CHISHOLM: I object.

10 THE COURT: What ground?

11 MR. CHISHOLM: Well, Judge, may we approach the
12 side bar?

13 THE COURT: Yes.

14 (At the side bar.)

15 MR. CHISHOLM: Your Honor, I assume the witness
16 is going to answer that he defaulted on the warrant issued
17 or, you know, something to that effect.

18 MR. BUCHWALD: A bench warrant issued.

19 MR. CHISHOLM: Of course, there was no evidence
20 that Mr. Flynn was ever aware of that or aware of that
21 information, therefore, it should not be admissible at
22 the trial on the question of his knowledge.

23 THE COURT: He was not aware of the issuance of
24 the warrant?

25 MR. CHISHOLM: Well, yes, that's what I would

say. There is no evidence that he was.

THE COURT: Overruled.

(In open court.)

MR. BUCHWALD: Mr. Reporter, can we have the last question read back.

(Record read.)

A Judge Bauman issued the bench warrant for the arrest of Mr. Flynn.

Q And would you briefly, without too much legalese, explain to the ladies and gentlemen of the jury what a bench warrant is?

A A bench warrant is an arrest warrant issued by the judge right from the bench.

I don't think there is any legalese in that.

Q Is that issued when a defendant fails to appear in court at the time that he is supposed to appear?

A Well, it could be issued for any number of reasons, but this one was issued for that reason.

Q Did you notify the FBI that the court had issued a warrant for Flynn's arrest when he failed to appear and became a fugitive on April 5, 1974?

A I did.

Q And during all of the events, until Mr. Flynn's arrest on February 14, 1977, did Mr. Flynn remain

a fugitive and fail to appear?

MR. CHISHOLM: I object.

THE COURT: What ground?

MR. CHISHOLM: Well, the phraseology, fugitive.
That is a legal conclusion.

THE COURT: Overruled.

A Yes.

Q I believe you identified the photograph 114 as a
photograph of Mr. Ford.

When was the last time that you saw Mr. Ford?

A The last time I saw Mr. Ford was in September
of 1975.

Q And what were you doing at that time?

A I was at his trial. If I'm not mistaken, the
very last time I saw him was probably when I testified at
that trial.

Q And I take it that Mr. Ford was being tried
alone in September, 1975?

A Yes.

MR. BUCHWALD: May I have just one moment,
your Honor?

THE COURT: Yes.

(Pause.)

Q Let me just show you, Mr. Rakoff, Government's

is now in evidence. He can read from an exhibit in evidence.

Q Mr. Buckley.

A 33 Howe Street, Dorchester, Massachusetts.

Q Is that H-o-w-e?

A Correct.

Q And is Mr. Flynn's telephone number listed?

A Yes, it is.

Q What is that telephone number?

A 265-2395.

Q What is the area code in the Dorchester area,
if you know?

MR. CHISHOLM: Is that on the document or not?

MR. BUCHWALD: I am asking if he knows the area
code in Dorchester.

A 617.

Q I believe you indicated that the mortgage was
not only in Mr. Flynn's name, but also in his wife's name.

MR. CHISHOLM: I object.

THE COURT: He can read from the application.

MR. CHISHOLM: I have no objection to his
reading from the application. It is the interpretation
that Mr. Buchwald's questions imply that I am objecting to.
He is repeating it time and time again.

Q Is the mortgage application signed by anyone?

1
2 Q Would you describe -- would you tell the
3 ladies and gentlemen of the jury what happened at the
4 closing on March 20, 1972, pertaining to the property at
5 115 Hibiscus Avenue?

6 A The closing was at our Weymouth office, which
7 is 45 Washington Street, Weymouth, Massachusetts. It was
8 held in the evening at 7:30. And at that closing there
9 were present the seller, the two buyers, myself, another
10 lawyer from the office and two real estate brokers.

11 Q Who was -- who were the two buyers?

12 A The two buyers were James P. Flynn and Carol
13 A. Flynn, husband and wife.

14 Q And who was the seller?

15 A The seller was James Rindone, Jr.

16 Q And in addition to yourself, I believe you
17 indicated there was one other attorney?

18 A Carl Arlanson from our office.

19 Q Was anyone else present?

20 A Two brokers, real estate brokers.

21 Q And would you relate to the ladies and gentle-
22 men -- I mean, did the -- what is the terminology?

23 A Closing?

24 Q Did the closing take place or did the closing
25 close?

1 gtjb 4

Derian - direct

2 A I have two telephone numbers. One would be
3 the home telephone number.

4 Q What was the home telephone number?

5 A 265-2395.

6 Q Mr. Derian, were any funds paid in order to
7 complete the closing?

8 A By the buyers?

9 Q That's correct.

10 A Yes.

11 Q Would you tell the ladies and gentlemen of
12 the jury when this was, where it was and what happened?

13 MR. CHISHOLM: I object.

14 THE COURT: What ground?

15 MR. CHISHOLM: Well, there is no connection
16 between this witness' testimony relating to the buyers and
17 anybody involved in this trial.

18 THE COURT: Overruled.

19 Q Would you tell the ladies and gentlemen of the
20 jury when this was, where this was and what happened?

21 A Again, this was at our Weymouth office at
22 45 Washington Street, approximately between 8 and 8:30
23 that evening at the termination of the closing, and at
24 that time I completed the figures for the closing and
25 advised the buyers how much was needed to complete the

gtjb 5

Derian - direct

1 closing, and the exact figure shown on my work sheets was
2 \$11,357.
3

4 At that point in time, Mr. Flynn produced a
5 large amount of cash, and although I can't give you the
6 substance of any conversations, I can tell you in essence
7 what transpired.

8 Q Would you do that?

9 A Okay.

10 MR. CHISHOLM: I object for the same reasons
11 previously stated in my last objection.

12 THE COURT: Overruled.

13 A I said that was quite a large amount of
14 money to bring to a closing to complete the closing, that
15 normally I would -- and I was directing this more to the
16 brokers -- expect the buyers to have been advised to bring
17 in checks, bank or certified checks to complete a closing.

18 I also said that it was getting kind of late
19 and I was kind of tired, we would go into one of the other
20 rooms and put all this money out on the table.

21 I took the buyers in with me and one of the
22 brokers and I asked that everyone pay attention, I only
23 wanted to go through counting this once because it was
24 getting late, and so in the presence of the buyers and
25 the broker, I started counting the money out.

1 gtjb 6

Derian - direct

2 We counted in piles of 100 and then put into
3 piles of 1,000's to count it all out.

4 Q What was the total amount of cash that you
5 counted up?

6 A \$11,357 was what I took in.

7 Q And in what denominations was this \$11,357?

8 A 100's, 50's, 20's, 10's. I don't remember if
9 there were -- well, there were a few smaller ones to com-
10 plete the \$57.

11 Q Were these crisp new bills?

12 A Not that I can remember.

13 Q And where was this money produced from? Who
14 produced it?

15 MR. CHISHOLM: I object.

16 THE COURT: What is the objection?

17 MR. CHISHOLM: I will withdraw that objection
18 if he knows who produced it.

19 A The buyer, Mr. [redacted], produced the money in
20 one large amount.

21 Q Did you see what he took it from or where he
22 was carrying it?

23 A That I can remember, it was either taken from
24 a folder or a large envelope.

25 Q Were there any papers that were then signed

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

xxx

MR. BUCHWALD: We also offer 72-12.

MR. CHISHOLM: No objection.

THE COURT: 72-12 received.

(Government Exhibit 72-12 for identification
was received in evidence.)

MR. BUCHWALD: Your Honor, at this time if I
might read Government Exhibit 71-11.

(Mr. Buchwald read from Government Exhibit
71-11 in evidence to the jury.)

MR. BUCHWALD: If I might at this time read
Government Exhibit 72-13 to the ladies and gentlemen of
the jury.

(Mr. Buchwald read from Government Exhibit
72-13 in evidence to the jury.)

MR. BUCHWALD: Your Honor, at this time if
we might read Government Exhibit 71-12 to the ladies and
gentlemen of the jury.

(Mr. Buchwald read from Government Exhibit
71-12 in evidence to the jury.)

MR. BUCHWALD: At this time, your Honor, the
Government offers Government Exhibits 17, 18 and 19
for identification into evidence.

(Pause.)

MR. CHISHOLM: I have no objection to 17, 18
or 19.

1
2 THE COURT: All right, received.

3 (Government Exhibits 17, 18 and 19 for
4 identification were received in evidence.)

5 MR. BUCHWALD: If I might read Government
6 Exhibit 17 which refers, in turn, to the other two exhibits.

7 (Mr. Buchwald read from Government Exhibit 17
8 in evidence to the jury.)

9 MR. BUCHWALD: Your Honor, at this time the
10 Government calls Mr. Del George.

11 D E L B E R T G E O R G E, called as a witness by
12 the Government, being first duly sworn, testified
13 as follows:

14 MR. BUCHWALD: May I proceed, your Honor?

15 THE COURT: Yes.

16 DIRECT EXAMINATION

17 BY MR. BUCHWALD:

18 Q Sir, by whom are you employed?

19 A The New York State Police.

20 Q In what capacity, sir?

21 A BCI investigator.

22 Q BCI stands for Bureau of Criminal Investigation?

23 Yes, sir.

24 Are you in a particular troop?

25 A Troop F, at Middletown, New York.

gab-8

Blacha-direct

1
2 A Yes.

3 Q Again, are the dates reflected on these records,
4 Government Exhibit 22, are those the dates of the events
5 to which the records refer?

6 A Yes.

7 MR. BUCHWALD: Your Honor, the Government
8 offers Exhibit 22 for identification into evidence.

9 THE COURT: Any objection?

10 MR. CHISHOLM: I haven't seen them.

11 MR. BUCHWALD: Mr. Lawson, could you bring them
12 down?

13 (Pause.)

14 MR. CHISHOLM: I have no objection.

15 THE COURT: 22, received.

16 (Government Exhibit 22 for identification
17 was received in evidence.)

18 Q Sir, can you tell from Government Exhibit 22
19 where telephone number 343-9446 is located?

20 A Yes, I can.

21 Q Incidentally, what area code are we talking
22 about?

23 A Area code 914.

24 Q All right.

25 Where is that telephone number, 914-343-9446

xxx

1 gab-9

Blacha-direct

2 located?

3 A It is located at the Holiday Inn of America
4 on Crystal Run Road in Middletown.

5 Q Can you tell where in the Holiday Inn it is
6 located?

7 A Just that it is inside.

8 Q Can you tell what kind of phone booth it is
9 or telephone it is?

10 A Right. It is a pay station located in a Shell
11 Fette, what we call a Shell Fette.

12 Q Did you ever personally go to the Holiday Inn
13 to see where 343-9446 is located?

14 A Yes, I have.

15 Q Where is it located?

16 A In the lobby, basically.

17 Q Can you tell from those records, Government
18 Exhibit 22, whether that telephone number was located in
19 the Holiday Inn on October 18, 1971?

20 A Yes, I can.

21 Q How can you tell that?

22 A By the dates on the 5 card-and line card showing
23 the installation date.

24 Q All right.

25 Which cards -- if they have different colors,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A On October 28th?

Q Right.

A On October 18th.

Q On October 18th.

A Just two.

Q How many calls are there altogether on October 18th from that phone booth?

A Six.

Q Would you point to where the October 18th telephone calls are?

A Starting here (indicating).

Q All right. Now, let me direct your attention to the eighth line from the bottom. Do you have that?

A Yes.

Q I would like you, by reading across on that line, to answer the following questions, if you would. Keep your finger right on that line.

What is the date of that telephone call?

A October 18th.

Q Of '71?

A Right.

Q And what is the telephone number that the call was made from?

A 343-9446.

1
2 Q And that's the phone booth in the Holiday
3 Inn?

4 A That's right.

5 Q What is the telephone number that that call
6 was made to, starting with the area code?

7 A Area code 617 265-2395.

8 Q And where is that telephone number that was
9 called located?

10 A In Dorchester, Massachusetts.

11 Q How long did that telephone call last?

12 A Two minutes.

13 Q How much did it cost?

14 A 85 cents.

15 Q What time was it made?

16 A During the time period of 9 to 9:59 p.m.

17 Q In other words, from 9 to 9:59 at night?

18 A Right.

19 Q What number appears there in Eastern Time?

20 A 21.

21 Q Which shows from 9 to 9:59.

22 What does the RH prefix mean? Do you see that?

23 A RH? There is an R8 prefix.

24 Q R8, yes.

25 A That is basically a serial number. R means

1
2 A That's right.

3 Q And what telephone number is that telephone
4 call made from, the one on the fourth line from the bottom?

5 A 343-9446.

6 Q And that is the same telephone booth in the
7 Holiday Inn?

8 A Right.

9 Q Where is that call made to, the telephone num-
10 ber that that call is made to, including the area code?

11 A It was made to area code 914 477-3342.

12 Q And where is that area code, 914 477-3442?
13 What city is that?

14 A Greenwood Lake, in New York.

15 Q How long did that telephone call to Greendwood
16 Lake, New York, last?

17 A One minute.

18 Q And how much did it cost?

19 A 20 cents.

20 Q And what time was that telephone call made?

21 A The 23rd hour.

22 Q So am I correct that some time between 11:00
23 at night and midnight?

24 A Yes.

25 Q Now, on October 18th, are there any other

2. pm

XXX

XXX

jgjb 1

Nemecek - direct

585

DAVID F. NEMECEK, called as a
witness by the government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. BUCHWALD:

Q By whom are you employed?

A Federal Bureau of Investigation.

Q In what capacity?

A I am currently assigned to headquarters in
Washington, D.C. as a special agent.

Q And directing your attention to November 2,
1971, do you recall where you were based at that time?

A The New York City office.

Q And do you recall specifically what, if any,
duties you had on November 2nd of 1971?

A Yes. I was assigned to an investigation. I
was working in Middletown, New York.

Q And in connection with that matter, what, if
anything, were you doing on November 2nd of '71?

A I conducted a latent fingerprint examination
in the Holiday Inn, Room 123, in Middletown, New York.

Q In connection with that, when you say conducted
a fingerprint investigation, would you explain to the
ladies and gentlemen what that entails?

1
2 Q Are there any others which you also found
3 to be the same on the inked fingerprint and the latent
4 fingerprint which you havenrt marked on the chart itself?

5 A Yes, there are.

6 Q Approximately how many others?

7 A Well, there are at least 14 that I can see in
8 both of the inked fingerprint and the latent fingerprint.

9 Q So I take it that in addition to these 11
10 then there are three others?

11 A At least.

12 Q From where you are, are you able to point out
13 those other three?

14 A Well, I can say that in this general area, in
15 the area near lines 3 and 4, there are -- I find additional
16 ending ridges, additional ridges which fork so that there
17 are approximately three points right in that small area
18 that I did not mark, because I thought those lines would
19 appear rather closely together and might be clearer in
20 this fashion that I did not mark.

21 Q Is it your opinion then that the latent finger-
22 print, 26-3, which is blown up onto 27 is the fingerprint
23 of James P. Flynn?

24 A It is my opinion, yes.

25 MR. BUCHWALD: I have no further questions of

gab-5

Miller-direct

As to the James P. Flynn who worked for Millis Transportation Company, what was his home address when he began working for Millis?

A 115 Hibiscus Avenue in Weymouth, Mass.

Q What was his Social Security number?

A 029-24-7633.

Q What kind of work did he do for Millis Transportation?

A Truck driver.

Q Was the company also known as Millis Trans.?

A Millis Transportation Co., Inc.

Q Was the James P. Flynn who worked for Millis Transportation a member of a union?

A Yes, he was.

Q Could you tell what union?

A Local 25 Teamsters.

Q When did James P. Flynn enter on duty as a driver with Millis Transportation?

A From the records I have, June 5, 1972.

Q June, what date?

A 5.

Q June 5, 1972?

A Yes.

Q When, if ever, did he stop working for Millis

gab-6

Miller-direct

Transportation? What do the records reflect?

A March 15, 1974.

Q Do the records show when his actual last week of work was? Was it that week?

A The week ending March 15, 1974.

Q Do the records indicate whether he quit or was fired?

A He neither quit nor was fired.

Q What happened?

A We tried contacting Mr. Flynn but to no avail. After a period of time in --

MR. CHISHOLM: Your Honor, I object.

THE COURT: What is the objection?

MR. CHISHOLM: He asked the witness a question about certain records and what they may or may not reflect. The witness is not responsive.

I thought the question of the witness was whether Mr. Flynn had quit the job; is that the question?

MR. BUCHWALD: Whether he quit or was fired.

THE COURT: Let's have the reporter read the question.

(Question read.)

THE COURT: The question is, what happened. What is the objection?

1 jg 5

Riley - direct

2 MR. CHISHOLM: No, he is not. The question
3 is what did --

4 THE COURT: Why don't we just ask the witness
5 to tell us what occurred when he went to Mr. Flynn's
6 home.

7 Q What occurred?

8 A We identified ourselves as special agents of
9 the FBI, told Mr. Flynn that we wish to speak with him
10 about a bank robbery that had occurred in Middletown,
11 New York at the Orange County Trust Company on October 20,
12 1971, told him that we wished to speak with him about his
13 presence in the Middletown, New York area, Middletown and
14 the Middletown, New York area.

15 At that time Mr. Flynn stated we caught him
16 unaware and he was not aware of what we were talking about.

17 Q Now, after Mr. Flynn said that you caught him
18 unaware and he wasn't aware of what you were talking about,
19 did you serve him with any kind of piece of paper?

20 A Yes, I did. I served him with a subpoena order-
21 ing him to appear in the Southern District of New York,
22 I believe it is on March 6, 1974.

23 Q And was this a subpoena which had been requested
24 that the Boston office of the FBI serve?

25 A Yes.

of call.

Q Do you remember the telephone number that you and Rod Weaver had in your cottage next to Sugar's?

A Yes, I do.

Q And what was the area code?

A Area code 914.

Q And what was the phone number?

A 477-3342.

Q Do you recall the Thomases ever making any telephone calls from your home?

A Making any calls? Maybe one or two.

Q Usually they would use phone booths for that?

A Yes.

Q Do you know whether or not Vincent Thomas worked?

A Yes.

Q Where did he work and what did he do?

A He worked as a plumber's apprentice in Middletown, New York.

Q Did he ever do any plumbing for you?

A Yes, he did.

Q What was that?

A We had a boiler that was running constantly and he tried to fix it and he cracked the tank and we

had trouble with it for a month.

Q What about Natasha Thomas?

A What about her?

Q Did she work at all?

A Yes, she did. She was a waitress at a restaurant called Jorgenson's.

Q Where were the Thomases from, if you know?

A They had always told us they were from Massachusetts, although we knew that they had lived quite a few different places: Las Vegas, for a short time in the Poconos. They moved around quite a bit. California.

Q Did you and Rod Weaver continue to live in that apartment next to Sugar's after the Thomases had left the apartment?

A For a short time. And then we also moved. And we moved -- we stayed on Jersey Avenue and just moved a little bit further down.

Q Is that to another apartment above or near Patty's Pizza Parlor?

A Right.

Q Where did Rod Weaver work?

A He also worked at T.G.'s and then he worked for Conklin. At the same time he worked for Conklin Lumber for a short time.

Q Is that at the lumber yard across the street?

A Yes.

Q During the period of time that you were living in the apartment with Rod Weaver, after you moved in and before the Thomases had left the apartment above Sugar's, do you recall any specific instances where Vincent Thomas called your telephone and asked to speak to Natasha?

A Yes.

Q And would you relate those to the ladies and gentlemen of the jury?

A Okay. I'm thinking of two calls. I just want to ask -- can I ask you a question?

Q Why don't you take them one at a time.

A Okay. I remember a call -- you are not talking about after he left? You are talking about when he was still in Greenwood Lake?

Q That's right.

A Okay. Yes. He did call the apartment one night and he merely asked -- I went over to see them and he was on his way out, and after he left, then Natasha came over to my house and we just sat around talking. She had a few beers.

And then, when it was time to go home, you know, when she decided she should walk across the way, she realized

1 she had locked herself out of the apartment, and she seemed
2 to very much want to get back into the apartment before
3 Vinny had gotten home.
4

5 So we threw pebbles and we woke the Saksen-
6 bergs up and she got into her apartment.

7 Q That was to get a key from the Saksenbergs?

8 A Yes, so she could open the door so she could get
9 in. There were two doors, you know, her apartment door and
10 then the door downstairs, and that was the door that was
11 locked.

12 So they opened it, they let her inside, and I
13 went back to my apartment. And this is when I received a
14 call from him, and he asked me if Natasha was still there,
15 and I said no, that she had just gone home.

16 And I said, "Do you want me to get her?" And
17 he said, "No, that's all right."

18 And that was it. He said, "I'll be home in a
19 little while."

20 But I didn't see him or her after that.

21 Q When Natasha came over, did she come over
22 with anyone else?

23 A That night?

24 Q Yes.

25 A No.

1

jgjb 6

Pina - direct

720

2

Q Was anyone else home other than you?

3

A Yes. Rod was home.

4

Q Do you recall what night of the week that was?

5

A No. I can say that it is not some nights. I

6

can say it is not a Friday, a Saturday or a Sunday.

7

Q What is Friday, Saturday and Sunday?

8

A Because I know we would have all been working

9

those nights.

10

Q Didyou work at that time?

11

A Yes.

12

Q Where didyou work?

13

A I worked at T.G.'s also. So it boils down

14

to either a Monday, Tuesday -- well, it can't be a Tues-

15

day.

16

Q Why not?

17

A Because the Saksenbergs would go into New

18

York that day, and they were home, because we woke them

19

up.

20

Q Every Tuesday the Saksenbergs would close down

21

and go to New York?

22

A Yes. So it would have to be a Monday or a

23

Wednesday of the week.

24

Q Or, I take it, possibly a Thursday?

25

A Thursday.

New York?

A Yes, he did.

Q What, if anything, did he say about the indictment?

A He said that -- my recollection is that he said that he had not received notice of an indictment against him.

Q And in the afternoon session did Mr. Flynn say anything about the indictment in this case?

A He did in response to a question by his attorney as opposed to the court.

Q Would you say what he said and put in context the comment that had been made just before?

A Well, my recollection is that his attorney said to the court that he had never -- he, meaning Mr. Flynn, had never been notified of his arraignment, and he turned to Mr. Flynn and Mr. Flynn said yes.

Q Just so that there is no confusion, that attorney was not Mr. Chisholm?

A Right, it was not Mr. Chisholm.

MR. BUCHWALD: I have no further questions of the witness, your Honor.

MR. CHISHOLM: May we again approach the side bar briefly, your Honor?

Was that the car?

MR. BUCHWALD: That's correct, your Honor. Of course it is true, as Mr. Chisholm says, that you can't date fingerprints. But that very night is the night of the phone call to Mr. Flynn's home in Boston from the Holiday Inn, from the phone booth in the lobby.

THE COURT: I had forgotten the telephone call. Yes.

MR. CHISHOLM: The time of that call, your Honor, as I recall the evidence, preceded the time of the checking in at whatever room that was by some period of time.

MR. BUCHWALD: That's correct. The telephone call to Mr. Flynn's home in Boston I believe is just around 10.00 at night and the check-in time indicated on the card is approximately 11.00.

What we argued to the jury on the Ford case and what we may or may not argue to the jury in this case is our belief that it was a call by Mr. Ford in fact to Mr. Flynn's home to inquire when Mr. Flynn could be expected to arrive and that shortly thereafter Mr. Flynn in fact did arrive.

There is no question, though, that there was a call within a brief period of time of his arrival to his

United States of America

vs.

74 cr. 336.

James Patrick Flynn

New York, New York.
May 18, 1977- 10:00 A.M.

(Trial resumed.)

(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen.

Ladies and gentlemen, as I told you last evening before the adjournment of this case until today, at this time we will proceed to summations, closing arguments.

Mr. Buchwald, are you ready to proceed?

MR. BUCHWALD: Yes. May I proceed, your Honor?

THE COURT: Yes, you may.

MR. BUCHWALD: Good morning, ladies and gentlemen.

May it please the Court, your Honor, Mr. Chisholm, Madam Forelady, ladies and gentlemen of the jury: You have now heard all of the evidence in the case. I think that there was some 37 witnesses who testified personally here and there were a great number of stipulations as to what other people would have said if

1 gab-2 900
2 they had been here personally, and umpty-ump exhibits.
3 I don't know -- I think we ended up with an Exhibit 206.
4 I don't think there were 206 exhibits. Some numbers
5 we skipped. There was a little bit of method to the
6 madness.

7 You may remember that series of Exhibits 71-1,
8 71-2, 71-12 and 13, and all the way up there. We tried
9 to put all the exhibits together that had to do with that
10 1971 automobile, the blue Plymouth that was stolen from
11 Logan Airport and was found at the Acme Shopping center,
12 the one that the robbers took from the high school to the
13 Acme Shopping Center. All the exhibits, the stipulations
14 and items found in that car and licenses from that car are
15 in the 71 series of exhibits.

16 If you should want to see those later, you
17 can ask for the series and 72-1 all the way through 72-13
18 and 14 are all of the exhibits having to do with the 1972
19 car, the beige Plymouth with the brown top, the one that
20 was stolen in Warwick, New York next to the Pioneer
21 Restaurant and ended up at the high school, the one that
22 the robbers took from the bank to the high school.

23 Then some of the others we just picked numbers
24 out of a hat. At least there was a little bit of
25 method there for the numbering.

If at any time during the course of your deliberations you can't recall some of the testimony or you disagree among yourselves as to what somebody said, you can ask to have any part of that testimony read back. You can ask to see any of the exhibits, to have them brought in to your deliberation room. You can examine and

consider all of the exhibits.

Exhibits, ladies and gentlemen, such as Government Exhibit 110, which you recall is the money order that went eight days before the robbery on October 12, 1971, from James P. Flynn with his signature, 33 Howe Street, Dorchester, Massachusetts, phone number 265-2395. You remember, he doesn't move to the Hibiscus Avenue house until the beginning of '72. That's the house he moves into with the cash payment. He is still at 33 Howe Street, Dorchester, Massachusetts, and the 265-2395 phone number. This is the money order that he sent eight days before the robbery to Ford's wife under the prior alias of Ellen Fitzgerald.

You remember the Fords living in Greenwood Lake at the time of the robbery under the names of Vincent and Natasha Thomas, and prior to being in Greenwood Lake using that alias, they are in California, and they get married in Las Vegas under the name of Joseph and Ellen Fitzgerald. Her maiden name is Ellen Dempsey. They are living in California. They get married in Las Vegas, living in California under the name Fitzgerald, in Greenwood Lake after the Concord under the name of the Thomases. Eight days before the robbery Flynn -- his signature, you can compare it to the signature on the license

1 gab-5
2 that he is finally found with and the signature on all
3 the mortgage papers -- is sending a money order to Ford's
4 wife under the prior alias.

5 You can consider exhibits such as Exhibit 71-3A
6 and B, the Massachusetts license plates which are found
7 in the trunk of the Hertz Rent-a-Car when the Hertz Rent-a-
8 Car is recovered at the Acme Shopping Center. These were
9 the original but true license plates of that car when it
10 was stolen from Logan Airport on October 18 of 1971, two days
11 before the robbery. These are discovered in the trunk of
12 the car.

13 When the car is recovered, it, in fact, has on
14 it this New York license which had been stolen from yet
15 another car, the 4132AZ license. But in the trunk are the
16 real license plates on that car, in the glove compartment
17 is the Hertz registration for the car showing that this
18 is the car that was stolen from Logan Airport.

19 You remember it is that license number, the
20 Massachusetts 43965F license number, that is the first real
21 break in the case, the one that leads to Government
22 Exhibits 18 and 19. Because on that night of October
23 18, 1971, people check into the Holiday Inn in Middletown,
24 the car has been stolen in Boston during October 18 and on
25 the evening of October 18 they check in under that fictitious

1 gab-6 904
2 Robert P. Barry name. You remember that, Room 123 of
3 the Holiday Inn, and they check in and they list 1971
4 Plymouth -- that's the Hertz Rent-a-Car -- and they list
5 the license, 43965F, which is the license on the registra-
6 tion and the actual true license of the car, and they come
7 in, that party of two, named Robert P. Barry, 25 North
8 Shore Drive, Lynn, Massachusetts, fictitious name, fictitious
9 address. The man fills in that he works for an insurance
10 company, John Hancock. They check in the night of the 18th.

11 You can see exhibits such as the Robert P.
12 Barry registration and the invoice from the Holiday Inn.

13 (continued on next page.)

14 End 1 AM
15
16
17
18
19
20
21
22
23
24
25

2.am

1 jgjb 1

905

2 You can see any of the exhibits, as I indi-
3 cated, exhibits including Exhibit 21-A, a portion of the
4 computer readout from the telephone company for the phone
5 booth in the Holiday Inn, showing that on that very night
6 of October 18, 1971, when the fictitious Robert P. Barry
7 room is registered for, that from the pay phone in the
8 lobby of the Holiday Inn there is one telephone call to
9 the Boston, Massachusetts area, 671 265-2395, which you know
10 from the telephone company records in evidence and from
11 the money orders in evidence and from the records of the
12 bank which are in evidence were the phone number of James
13 Flynn; you know that that is the phone number of James
14 Flynn at 33 Howe Street, Dorchester, Massachusetts.

15 And the same night, in the computer readout
16 record, you have the telephone number from that same pay
17 telephone at the Holiday Inn, the phone number 914 477-3342.
18 And you remember whose phone number that one was. That is
19 the phone number of Rod and Arlene Weaver, now she is
20 Arlene Pina. But they used to live in Greenwood Lake under
21 the names of Rod and Arlene Weaver, next to Sugar's Deli-
22 catessen. Right next to them, above Sugar's, were Vincent
23 and Natasha Thomas, the people she knew as Vincent and
24 Natasha Thomas.

25 At that time they didn't have their own phone.

1
2 You know that from Petrie, the co-worker, and from Arlene
3 Pina herself, and from the stipulated testimony of Richard
4 Kettle. Vincent Thomas used to call in to his wife by
5 calling on the Weaver's phone.

6 And, as a matter of fact, if you go back to the
7 testimony, you will recall she gets back from her honey-
8 moon -- she is married October 10th, gets back from the
9 honeymoon October 16th. Ford, alias Vincent Thomas, is
10 leaving town Sunday, October 24th, or at least that is the
11 best date that we can arrive at, and she knows that she
12 doesn't know people in Middletown. She remembers getting
13 a call from Vincent Thomas late at night.

14 Remember, Natasha had come over to visit her
15 and then they had to throw pebbles on Saksenberg's window
16 for Natasha to get back in late at night to open up the
17 door. And then a call came from Vincent Thomas, and it was
18 a quick call, to speak to Natasha. And she asks Vincent
19 Thomas if he wants her to get his wife, and he says it
20 is not necessary, and that's the end of the call. And it
21 is just a quick call, and you can see from the telephone
22 company records it is just a quick call, a two-minute call.

23 But zeroing in more precisely on the date, she
24 knows it is not a Friday, Saturday or Sunday because she
25 works Fridays, Saturdays and Sundays, and she knows it is

not a Tuesday, and you know it is not a Tuesday, because it is a night when the Saksenbergs were home. They throw pebbles at the Saksenberg's window. And the Saksenbergs used to leave on Tuesdays, every Tuesday. The Saksenbergs themselves say that in their stipulated testimony. And Arlene Pina confirms that.

So it can only be a Monday, Wednesday or Thursday of that week. She is able to get it down. Of course she doesn't have a specific recollection, but she just knows that from the fact that it could only have been one of those three nights, late at night, the call from Vincent Thomas.

And so this call is October 18th, two days before the robbery. The robbery is October 20th, a Wednesday. So this call is on Monday night, late at night, a short telephone call. The records show that in fact it is a two-minute call.

So the telephone company records show one call to Flynn's phone number in Massachusetts, one call to the phone number then used by Ford under the alias of Thomas during that time period.

And you can consider records, of course, ladies and gentlemen, exhibits such as the fingerprint, thought I suspect, as non-experts, this may be of limited value to you. But look at the chart and the stipulation that there was a

known fingerprint of the defendant James P. Flynn being compared with the blowup of the latent fingerprint found and lifted in Room 123, the Robert P. Barry room.

You can consider the testimony of the expert about Flynn's fingerprint having been found in that Robert P. Barry room.

You can consider, ladies and gentlemen, records such as Government's Exhibits, I think it is, 87-A to H and 88. These are the records from the South Weymouth Savings Bank. Because, as you remember, within a couple of months of the bank robbery Flynn is making an application for the mortgage for the new house at 115 Hibiscus Avenue in South Weymouth. And on March 20th of 1972 he is showing up at that closing with \$11,357 in cash, and you have the records from the bank itself with all those signatures again. Consider, is this the same James Flynn? That was the question. Is it the same James Flynn with the cash as the defendant on trial?

And in considering whether it is the same James Flynn, whether it is tied in, you have Government's Exhibit 87-B, which is applicant's financial statement dated June 6, '72, James P. Flynn, 33 Howe Street, Dorchester, Massachusetts. Well, that ties in as the address.

Date of birth 2/5/34, February 5, '34. That

1
2 ties in as the date of birth from the license in Flynn's
3 own name. Remember, when he is arrested, he has three
4 licenses, two in Chambers' name but with his picture on
5 it, and one in his own name with his picture on it, and the
6 date of birth 2/5/34 is the date of birth on that license
7 and also the date of birth that the union, Teamsters 25,
8 has for him and that Millis Transportation has for him.
9 So that ties in.

10 Home telephone: 265-2395. So that ties in on
11 the question of is it the same James Flynn. It could be a
12 different James Flynn who had all that cash, \$11,357. The
13 most cash that the attorney Robert Derian had ever seen
14 in 2,000 closings that he has handled up in Massachusetts.
15 Was it the same James P. Flynn?

16 Then it says previous employment, Teamsters
17 Local 25. Well, you know that Flynn had some connection
18 with Local 25. He said that himself when he was telling
19 the judge in this court house on February 25th of this
20 year, when he was telling the judge in this court, "Oh,
21 I have been working for the last three years at Millis
22 Transportation out of Local 25 under my own name," when he
23 was pretending that he wasn't really a fugitive, that he
24 was just living an ordinary existence during the preceding
25 years.

1
2 Of course you heard the union man saying there
3 were two James Flynn's in the union. So that is not con-
4 clusive.

5 You have the wife's name Carole Ann Flynn,
6 and you know that Mr. Flynn's wife's name is Carole Ann
7 Flynn. You know that from Government's Exhibit 89, which
8 is one of the stipulations.

9 You have name of nearest relative, Mary
10 Ludington, address 45 Speedwell Street, Dorchester, Massa-
11 chusetts, relationship mother-in-law.

12 Well, you know from another stipulation that
13 we have that his wife's mother's name is Mary Ludington and
14 that in January, 1972 she was in fact living at 45 Speed-
15 well Street, Dorchester, Massachusetts. So the evidence
16 is getting pretty conclusive that this James P. Flynn with
17 the \$11,357 in cash is the James P. Flynn on trial.

18 Interesting: life insurance, John Hancock.
19 That's just circumstance. It might be nothing, but it is
20 interesting that that John Hancock name was put on the
21 Robert P. Barry registration.

22 He puts -- let's see -- total monthly income
23 \$980.80. A monthly income of \$980. What does that come
24 to for the year? About \$12,000 for the year? And yet
25 \$11,357 in cash at the closing from an envelope that he

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

jgjb

911

takes out, not new bills, not just withdrawn from the bank,
and not large bills. I mean, you know, if you are just
going to withdraw cash from the bank to bring to a closing
as opposed to a certified check, I mean this is 10's and
20's and 50's, the kinds of denominations, the kind of
denominations of the currency that Linda Nichols listed
the currency put into those Federal Reserve bags that were
to be picked up by the Brink's drivers but were picked up
by the three masked men instead.

(Continued on next page.)

gab-1

And then there is a listing still on Government Exhibit 87B, the James P. Flynn application, Social Security identification, 029-28-8265. Well, this is not Flynn's Social Security number. You know that from his own driver's license where the -- you remember in Massachusetts the driver's license is the same as the Social Security number.

His driver's license is 02924 -- I think it is 7633. We have said it so many times during the trial that I think I have it memorized. I might be off. It is a different one. You also know it is that other one from the Millis Transportation records and from the union records.

So what is this Social Security 029-28-8265 doing here? You might remember the last day of the trial, it was out of place. It wasn't related to anything. You probably didn't know what it meant at the time. We read a stipulation, Government Exhibit 92. Social Security number 029-28-8265 is the Social Security number of Carol Flynn. It still connects that we are talking about the James Flynn right here as the man with all the cash at the Weymouth Savings Bank at the house closing.

Of course you have James P. Flynn's signature. You have an opportunity to compare that when we passed

1 gab-2

2 that around, compare it to the money order, compare it to
3 the driver's license, see if it is the same signature.
4 You also have -- it says credit experience and financial
5 statement, Kennedy's. It has credit card account number
6 23394481. That's back here on this document, January
7 6 of 1972. That Kennedy's account number.

8 When Officer Pieroni, Special Agent Pieroni is
9 going through many of the documents that are found and Flynn
10 at the time of his arrest that are turned over in the manila
11 envelope from the State Police to the FBI when Flynn is
12 being turned over from State authority to Federal authority,
13 you go back to his testimony, you will see among those
14 items was a Kennedy's credit card and with the account
15 number and Officer Pieroni wrote it in his report and
16 testified about it here 23374481, same account number.

17 Have we failed to tie in that the man with
18 the cash at the closing, the man with more cash than Mr.
19 Derian had ever seen in 2000 closings, that that man was this
20 defendant James P. Flynn? Just a few months after the
21 robbery old bills, not new bills, cash, not check.

22 You can consider, ladies and gentlemen, in
23 addition to those exhibits Government Exhibit 48. This
24 is the formal notice of arraignment which you remember goes
25 out from the clerk's office here and is mailed out to Mr.

1 gab-3

2 Flynn advising him of the fact that he is due to be
3 arraigned in courtroom 2804 before Judge Bauman on April
4 15, 1974. So the formal notice of arraignment that is
5 mailed to him at the 115 Hibiscus address in Weymouth, Mass-
6 achusetts, you can consider this also in the context of
7 Assistant United States Attorney Rakoff's testimony about
8 a letter which Mr. Rakoff sent to Mr. Chisholm, a copy of
9 which was sent to Mr. Flynn, another copy was sent to the
10 Court, advising Mr. Chisholm through the copy to Mr.
11 Flynn that the fact that the indictment had been voted
12 and that the arraignment was scheduled for April 15, 1974.

13 You can consider this exhibit, Exhibit 48, you
14 can consider it in relation, in context to Mr. Rakoff's
15 testimony about the letter. You can consider whether
16 those items were lost in the mail, whether Mr. Flynn never
17 knew during the three years in Florida and New Hampshire
18 under the name Harrigan and Chambers that he was wanted
19 by the police or by the FBI.

20 You can consider the licenses. These are in
21 evidence as well. I have referred to them already, the
22 three licenses that are found in the wallet underneath
23 the passenger's side where Flynn is sitting. The
24 car is stopped at 2:45 in the morning on February 14 of '77
25 by the State trooper. Flynn is on the passenger side. I

1 think a Mr. Margeson is the driver.

2
3 First Flynn denies having any identification,
4 but then when he gets out of the car they find the wallet
5 underneath on the driver's side and they find the three
6 licenses in there all with Mr. Flynn's photograph. There
7 is no real question that that is the same photograph.

8 Only one of them in his name. The other two
9 in the name of his former friend, his former acquaintance
10 who hasn't seen him for three or three and a half years,
11 John Chambers, obviously forged licenses. The name of the
12 registrar misspelled, John Chambers' name forged.
13 Remember we called the real Mr. Chambers a witness. He
14 brought in his license. His own real license had his own
15 real picture, not Mr. Flynn's picture. It of course had his
16 signature. He could say these were not his own signatures.

17 You can ask yourselves why a man who doesn't
18 know that he is wanted by the police or by the FBI, why
19 a man who doesn't know that would have fake identification
20 on him and why -- you can ask yourselves why a man who
21 has this identification on him would tell the trooper I
22 don't have any identification. Perhaps there is some
23 sense in sticking that wallet under the chair real quick
24 and saying I don't have any identification when you know
25 you are carrying fake identification on you.

1 gab-5
2 It is not as if he is 18 years old and trying
3 to get into bars before he is 21, States that have a
4 21-year old drinking limit. Can you think of any other
5 reason other than drinking limits or something, why people
6 have false identifications? The claim is he didn't
7 know he was wanted.

8 Ladies and gentlemen, you can consider all of
9 those exhibits in your deliberations.

10 I would like, if I might, to try to give you
11 a quick overview of the evidence and stick some of the
12 pieces together. You recall back at the bank we had three
13 masked robbers. There is a slight description of the
14 robbers that we get from the people in the bank. They don't
15 see too much. They are forced on the ground. The
16 robbers have masks and gloves. There is the first link to
17 the cars, the license plate, the partial license plate that
18 Mrs. Bambakos sees and she shouts out and she knows it is
19 a New Jersey plate and three letters and three numbers,
20 and she shouts out TPF784, and under the circumstances --
21 she is crawling up to the window, looking out that curtain,
22 the car is starting to drive away up Fitzgerald. The
23 car ended up of course having the New Jersey license POP784
24 instead of TPF784. The first clue, the first link to
25 the car.

1 gab-6
2 As far as the identifications of people in
3 the bank, there really isn't much that emerges. If you
4 put all the testimony together, you have the one man
5 with the shotgun who is in the lobby. He is out by the
6 customer counter which in the pictures ends up with the coffee
7 cups later on. You remember that. He is a shorter
8 fellow. I think of the witnesses who describe him,
9 all but one of him as about five, seven or five, six
10 or five, eight. I think Mrs. Bambakos thought he was a
11 little bit taller. I think she said five, ten or five,
12 eleven. All the others, he is the shorter fellow. He is
13 the fellow with the Halloween mask as opposed to the ski
14 mask, which I think Mrs. Novak talks about the Halloween
15 mask, Mr. Nielson, Mrs. Nichols, all talk about the Halloween
16 mask. He is also the fellow, as I said, with the shotgun.

17 You remember the shotgun shells are found in
18 the coat in the car in that beige Plymouth later on by the
19 officer when he is going through all of the things that
20 are found in that beige Plymouth. He is the one with the
21 coat. You recall Mr. Nielson identified the coat when the
22 coat is brought back to him by Officer Holik. Mrs. Nichols
23 did not. She thought it wasn't the coat. She thought it
24 was a tweed coat.

25 I ask you as you look at the coat. If you

1 gab-7
2 were Mrs. Nichols during the course of a robbery and you
3 were looking at the man who was in the lobby, not the man
4 next to you at the counter and somebody had a gun a foot
5 from your head -- you remember her testimony -- and you
6 were hysterical -- remember Mr. Nielson was talking about
7 Mrs. Nichols was crying audibly during the course of the
8 robbery -- might this not look to you like a tweed coat
9 from that distance under those conditions?

10 In any event, Mr. Nielson was able to positively
11 identify it as the coat of the man with the shotgun, the
12 shorter man.

13 So it is fairly clear that the shorter man,
14 the one with the shotgun, is not Flynn or Ford. He's too short
15 If you put it all together it sounds like he is the shorter
16 fellow. The other two people, the men with the pistols,
17 the one who goes one to Mrs. Nichols and has the gun on her,
18 and the one who has the gun at least in the first stage of
19 the robbery on Mrs. Gennario and Mr. Nielson who testified,
20 who ends up taking -- one of the fellows with the pistol
21 takes the bags, remember, with the \$190,000 that has been
22 packed for Brink's and the other fellow with the pistol
23 takes the \$13,000 in cash from Mr. Nielson's cash register.
24 Those two fellows, if you go through the record, the
25 descriptions of them from everybody who could estimate

1 their height -- people here are frightened and they are
2
3 scared and upset. Those who could give estimates all
4 say five, eleven to six foot. Those are the heights you
5 know of Ford and of Flynn. You know that it is Ford's
6 height on his Vincent Thomas driver's license, Government
7 Exhibits 108 and 109. You will see his height is listed
8 as six feet. On the California, Joseph Fitzgerald
9 driver's license -- we have the photograph and the driver's
10 license from California -- you will see his height there
11 listed as five, eleven. You can also see the Chicago
12 arrest photos of Ford. This is when he is arrested under
13 the name of John August finally in Chicago in October of
14 '73, after he is climbing down the rope ladder from the
15 apartment. You see they have him standing next to some-
16 thing where you can measure his height.

17 You can take account of the fact that he has
18 head tilted and his hair is longer, he is around six foot.
19 You know that Flynn is in that height range. You may
20 have had an opportunity to observe him during the course
21 of the trial. Six foot is on his license, Government
22 Exhibit 83C. That is the genuine or the license in the
23 name of James P. Flynn with the picture of James P. Flynn.
24 That lists a height of six foot.

25 Also you may recall Trooper Costa's testimony

1 gab-9
2 that in writing his report the next morning he listed
3 Mr. Flynn as six foot.

4 Now, Mrs. Bambakos gets the partial license
5 plate. Then the car drives up Fitzgerald Road, it goes
6 past Miss Whooley, the nurse. Remember, she notices three
7 occupants in the car. She gets what she considers a pretty
8 good look at two of them, the driver and the rear seat
9 passenger, not the front seat passenger. Who is the
10 driver? That's Ford. She picks out his photograph from
11 the photo spread within, I think it is, about a week and
12 a half of the robbery. I think November 2nd or November
13 4th she picks out Ford from the photospread of 14. She
14 never at any time, ladies and gentlemen, ever picks out
15 any other photograph of any other person as the driver.
16 She picks out a lot of photographs as the person resembling
17 the person in the back seat. That's the only photograph
18 she ever picks out of the driver. She is able, as you
19 recall from the testimony, to pick Ford out in court in
20 September of '75.

21 It makes the most sense if you think about it
22 that Ford would be driving this car. Remember, this is
23 the beige Plymouth with the brown top and it is the one
24 that is stolen from the Plymouth dealer in Warwick, New
25 York. That's at the intersection of Routes 17A and 94.

1 gab-10 921
2 It's the route that Ford is traveling regularly between
3 Greenwood Lake and Middletown. It is right next to the
4 Pioneer Restaurant, which is the restaurant that Mr.
5 Petri drops him off at when Petrie is driving him back from
6 Middletown. It is the car which at least the evidence
7 would indicate that Ford was responsible for getting for the
8 robbery, ~~The~~ Boston car, - It looks like the two people who
9 end up in the Robert P. Barry ^{from} ~~one~~ have brought that one
10 down from Boston on the 18th. The end up at the Holiday
11 Inn the evening of the 18th, so it would make more sense
12 also in ~~the~~ sense that Ford is the one who would be the
13 first driver from the bank. He is also the one who
14 would be the most familiar with the Middletown area.

15 (continued on next page.)

16 End 3 AM
17
18
19
20
21
22
23
24
25

Remember, Flynn, the other fellow from Boston? They are from out of town. But Ford, he works a lot in Middletown, he cashes his checks across the street at Lloyd's Department Store, he eats lunch a lot at Lloyd's, of course all of this under the name Vincent Thomas. But he is the one familiar with the Middletown area.

And you can't be certain who is who in the car, but it would make the most sense that he would be the driver of that car, the one stolen from Warwick, the one stolen from the place -- you can see the window that is jimmied open right from the Pioneer Restaurant itself, if you look through the window of the Pioneer Restaurant.

Now the man in the back seat. Well, we don't know who the man in the back seat is. Miss Whooley picks out, I think, three or four different photographs, at different times, of people resembling the man in the back seat. And one picture she thinks is the man in the back seta. It is pretty clear, whoever he is, that he is the shorter fellow, who had the shotgun in the bank.

She is really, it seems, if you take a look at all those photos, trying to pick out somebody with a darker complexion, darker hair. I mean, who knows? But that's what it looks like.

She felt that she got a good view of these two

1 people. Remember, she is crossing the street. This car
2 is coming up at a fast rate of speed; at least considering
3 that it is a dirt road and it has the potholes.
4

5 She is crossing the street. It comes on by
6 her. The driver's side is the closest. The rear seat
7 passenger is on the driver's side. The front seat passen-
8 ger is the furthest away.

9 She gets, you know, a pretty good look at the
10 car. She knows it is a beige car. She doesn't know
11 models. But a lot of people don't know models of cars.
12 She knows it has an antenna on the right with the flag.
13 You know from the photographs that there is an antenna on
14 the right and it has an American flag on it. So she did
15 get a pretty good look at the car.

16 But it looks, if you put all the photographs
17 and the composite when she goes down to Rockland County,
18 like the person she is describing in the back is that
19 fellow with the shotgun, somebody who had the darker hair,
20 a darker complexion.

21 Now, of course, the beige car. Let me point
22 out to you one other fact which might have seemed important
23 or unimportant. It may seem important or unimportant now.
24 But another reason to think that they got a pretty good
25 look at the car is that it appears that the occupants of

the car thought that she got a pretty good look at it.

And by that I mean, when they go on up Fitzgerald, they go up Fitzgerald Road to the intersection, remember Overhill and Robertson, do you remember the helicopter photo and you see the little circle up there?

You heard from Officer Cannock what is the shortest way to get to the high school parking lot, which you know is where they are going to end up. They stashed the blue car there to switch into the blue car.

The shortest way is to go left, 45/100 of a mile. But which way do they go?

She couldn't recall now. But she remembered in her statement which she gave to the officers way back then that they turned right, they turned to the right. And whether you make the first right on Overhill or the second right on Robertson, which in effect is the wrong direction and then you have to cut back, it adds to the total mileage, it becomes about .7 miles instead of .45 miles.

So why do the robbers, who stashed that other car at the high school, go in the wrong direction? You can't be certain, you don't know. Maybe they just made a mistake. But I suggest that one possibility is that they see this lady there, they've got to, when they are going

1 on the dirt road and she is walking across, slow up, and
2 they see her there, they see her staring at them.
3

4 It is always possible that their beige car
5 has been spotted by somebody back at the bank. And when
6 they pass, they want to turn right so that if the police
7 are hot on their tail, if the police pass this lady on
8 the street and they say, "Which way did the beige car
9 head?" what will she say? She will say, "To the right,"
10 and the police will go off in the wrong direction.

11 So that is at least one possibility.

12 Another reason to think that she perhaps got
13 a pretty good look at them is because they, it appears,
14 thought she got a pretty good look at them. They tried
15 to give the appearance they are going to the right when
16 in fact you know that they are doubling back and going to
17 the high school.

18 I mean, that beige car is the car where they
19 end up, with the Halloween mask, the coat and the shotgun
20 bullets in each of the pockets of the coat. You know that
21 that's the car.

22 So there is also the fact, again suggesting that
23 Ford was the driver of that one, that -- remember, he leaves
24 Middletown almost right away, two days later is his last
25 day of work and his wife's last day of work, October 22nd,

1 that Friday, he leaves town suddenly, the 24th, the wife
2 leaves Tuesday, October 26th, no notice to the co-workers.
3 They leave their furniture behind, they leave suddenly.
4

5 And that would be something because, remember,
6 he works a lot in Middletown. If he feels he has been
7 spotted, if he feels there is somebody -- Middletown isn't
8 like New York City. It is a little bit smaller. If you
9 feel that somebody has gotten a good look at you, you can't
10 go back to be working there in Middletown.

11 It is true he does work two more days. Remem-
12 ber, the work records show he works half a day on October
13 19th in Middletown, does not work at all on October 20th,
14 the day of the bank robbery, does work on October 21st
15 and October 22nd. At least the records indicate that.

16 But on the 21st and the 22nd he is not working
17 in Middletown. He is working in projects in Ridgewood,
18 New Jersey and in Pomona, New York. But what he can't
19 afford to do is to be working again in Middletown, and the
20 22nd is his last day of work.

21 He clears out of work, he clears out of the
22 cottage next to Sugar's, they leave suddenly, they say
23 they are going to Boston, one of their parents is sick
24 or something and he has a new job opportunity, whatever
25 the story is that they give to Pina and to Kettle and to

the Saksenbergs.

He leaves, and you remember that by October, '73 he is in Chicago and he is John August and he is the man climbing down the rope ladder and finally arrested.

Now, in any event, the car eventually ends up at the high school parking lot. They back the beige car in, they pull out in the blue car, and they leave. And you remember that backing it in, they only have the one license. Both these cars, the blue car and the beige car end up having on them licenses that were stolen from yet other cars that happened to be parked next to each other a couple of days before at the Bloomingdale's parking lot in Hackensack. Do you remember the stipulations from Mr. Hirning and Mr. Revere?

So they want the license to be facing the back, not the front, so that nobody sees, when they have stashed the car, that it is a hot license.

But they back in the brown car, pull out in the blue car, and you remember the testimony, the blue car is further away, and the front seat passenger side of the brown car when it went back in would be closest to the driver's side of the blue car.

And I suggest from the way one car backs in and the other car pulls straight out that there is a

substantial reason to believe, a substantial likelihood that they switched drivers then. It would be the quickest way. The man closest to the driver's side of the blue car would be the front seat passenger of the brown car. It would make the most sense.

Also they are switching into the blue car, which is the one stolen from the Boston area, from the Boston Airport, presumably already driven down by the Boston entrants in this triumvirate, the one that has been brought down from Logan Airport to the Holiday Inn on the 18th.

I know Mr. Chisholm had Tom McCoy saying, "Well, yes, at some point I told one of the agents that I thought they were the same driver going in and out."

But you remember his testimony here. The first thing that was strange to him was the license, the New Jersey license with the New York inspection sticker, the New Jersey POP784. But it is a new car from Stanley Chrysler in Warwick, New York. It has the New York inspection sticker. That is what catches his eye originally.

He really doesn't get a good view of the people until they come out. He sees the three people. The man in the back is hunched down. The man in the front sort of has his hand on him, and he gets a pretty good glimpse, he feels, of the front seat passenger and what he feels is

1 jgjb 8

2 a very good look at the driver of the car coming out.

3 But from his description -- remember, his
4 description? He makes some mistakes later on. We will
5 get to those in a minute. The description is constant.
6 The description is uniform. He feels the man has blue
7 eyes. He says that to every inspector, every officer who
8 sees him and interviews him in that whole period of time.
9 He feels -- and he always says the man has blondish or
10 dirty blonde hair. He says that throughout. Then when
11 he is misidentifying Mr. Ford later on, even when he says
12 Ford, who doesn't have blue eyes or doesn't have blonde
13 hair, at the trial he is still giving that jury the
14 description he remembers, that the guy had blondish hair
15 and blue eyes. So that is something he was pretty certain
16 of.

17 Now, McCoy, of course, in court can only iden-
18 tify Flynn as resembling the driver. Parenthetically I
19 might indicate, one of the purposes of flight, of running
20 away, of delaying trials is the longer the delay, of
21 course, the greater the likelihood that people aren't
22 going to be sure of anything, their facts, what people
23 look like or anything.

24 But of course, in addition, Tom McCoy is
25 probably a little apprehensive about positively identifying

1 anyone. Remember, a couple of months after the robbery
2 he thought that the fellow at the Carvel stand, who ends
3 up being Ron Christopher, did it.
4

5 Well, of course, you saw Ron Christopher in
6 the courtroom when we brought him in. You had an oppor-
7 tunity to observe Ron Christopher and observe James Flynn.
8 And I would suggest to you that the resemblance between
9 the two is quite remarkable. So maybe even that misiden-
10 tification by Mr. McCoy back in January of '72 is meaning-
11 ful.

12 Of course, Mr. Christopher had a mustache now.
13 But, as you know from the testimony, from his own testi-
14 mony, he did not -- Mr. Christopher did not -- have a
15 mustache back in 1971. But neither did Flynn, ladies and
16 gentlemen. He had no mustache, remember, in a 1974 photo-
17 graph that we have of Mr. Flynn, he had no mustache in
18 the 1969 photograph.

19 Mr. Derian from the bank couldn't identify
20 him. But Mr. Derian's recollection was that the Jim
21 Flynn he met in March of '72 had no mustache. So neither
22 of them, Christopher or Flynn, had mustaches back then.

23 And you have, of course, also the 1971 photos
24 of Mr. Christopher, which were provided by Mr. Christopher,
25 which you can look at and compare to the '74 and '68

photographs of Mr. Flynn.

You can also see the somewhat changed appearance of Mr. Flynn in his arrest photographs, when he is arrested February 14, '77 and he has the curlier hair. He's got that tan from Florida. I guess that but ticket from Florida we finally tied in to Mr. Flynn. But you can see all of those photographs, and you can take a look and compare them to the photographs of Mr. Christopher.

Now, McCoy always described the man as blue eyes, blonde, dirty blonde hair.

Well, you can see Flynn's blue eyes, very penetrating blue eyes, yourself, ladies and gentlemen, in the color photograph taken in 1974, Government's Exhibit 29-A. It is a little harder to see in person underneath the glasses. But perhaps you can.

And remember Trooper Costa's testimony from Massachusetts in describing the defendant in his arrest report, writes down "blue eyes." Go back to Trooper Costa's testimony.

Trooper Costa also writes down, in describing the hair, February 14, '77, "light brown or blonde hair." Of course, Flynn had just come back from Florida, and after some sun his hair might seem a little lighter. Of course, the robbery also occurred when? October 20th of '71.

I don't know if it was a warm summer or a cold summer, '71.

Ladies and gentlemen, even when McCoy picks out Ford at the last trial as the driver, probably wrong, because probably they had switched drivers in the parking lot, he describes and he tells that jury that the man he saw had blondish hair and blue eyes. And when he gets home he has a chance to calm down and he thinks and realizes, "Well, the fellow he identified doesn't have blonde hair and blue eyes." It is he himself who called up the State Police. He says, "I think I made a mistake. It is the government who brings him back to testify and tell that jury that he thought he made a mistake, so that the jury could get the most accurate picture of the total of the evidence.

Now, ladies and gentlemen, sure as shooting, when the blue Hertz car stolen from Boston pulls out of the parking lot, McCoy sees the car, because he copies down the license. He gives the license to the police and he gives the police the license number New York 413292, which is pretty good, all things considered. Remember? He is a 16 year old kid at that time. He sees something happen real fast, and New York 413292 is pretty good for what we end up with.

You know that these two cars are connected,

1

jgjb

933

2

the brown car that is left in the high school, the blue

3

car that is left in the Acme. They both have on them at

4

the time that they are recovered license plates that were

5

stolen from yet two other adjoining cars in that Hackensack

6

Bloomington's parking lot.

7

8

(Continued on next page.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

2 The rest I think, ladies and gentlemen, you
3 probably remember pretty well. The cars lead to the
4 Holiday Inn. They have the list with the four license
5 numbers, including that Massachusetts 43965F, the
6 true license number of the car stolen at Logan Airport in
7 Boston. Somebody registers under that license number under
8 the name of Robert P. Barry on the night of October 18,
9 Monday, October 18, two days before the robbery, Room
10 123, party of two, 25 North Shore Drive, Lynn, Massachusetts,
11 fictitious name, fictitious address, Flynn's fingerprint
12 in Room 123, the Robert P. Barry room, no registrations
13 in the Holiday Inn in the name of James P. Flynn during the
14 whole period.

15 You remember the police officer, State Police
16 Officer Cannock who brought in the whole box of the
17 registrations from the Holiday Inn, none actually in the
18 name of James Flynn or Richard Ford or Vincent Thomas, but
19 Flynn's fingerprint in the Robert P. Barry room, Room 123.
20 No telephone calls from Room 123 itself on that night,
21 but on that night telephone calls from the pay phone in the
22 lobby, one to Flynn's number in Dorchester, one to the
23 number used by Ford under the alias of Thomas in Greenwood
24 Lake.

25 After that, ladies and gentlemen, in addition

1 gab-2

2 to the fingerprint and the phone calls -- remember immed-
3 iately -- incidentally, the other phone call on October
4 21, the day after the bank robbery, the collect call from
5 New London on what would be a normal and natural backup from
6 New York City up to Boston, the collect call from the pay
7 phone in New London to his own home phone number, 265-2395
8 phone number from a Jim Flynn lasts 43 seconds. You
9 remember the testimony of the man from the Connecticut
10 phone company and how he showed that that phone call is
11 the same phone call as is reflected on Flynn's phone bill,
12 even though there is the difference in the cycle and
13 batch numbers because of the ten digits. I don't want
14 to go through all that. I think you remember that
15 testimony.

16 In addition to the fingerprint and the phone
17 calls and the money order from Flynn to Ford's wife under
18 the prior alias eight days before the bank robbery --
19 remember that tennis net, two poles of evidence and the
20 tennis net, the bridges in between connecting Flynn and
21 Ford. IN addition to what we have, we have the cash
22 within a few months of the robbery Flynn is buying a new
23 house, January 6, '72. At the closing he has the \$11,357
24 in cash, cash, tens, twenties, fifties, just like the
25 denominations of currency stolen from the bank, this man who

1 gab-3

2 earns only \$980 a month. You know it is this James
3 P. Flynn from all of that information on the financial
4 applications, same mother-in-law, wife, Social Security
5 number, his Kennedy's account card, his phone number, Local
6 25, his signature, if you compare the signature to the
7 license of the other mortgage papers or to the money order.

8 In addition to that, ladies and gentlemen,
9 there is the testimony about February 1974. This is
10 a couple of months after Ford has been arrested in Chicago
11 under the name of John August. Agents Riley and Joyce
12 go to Flynn's house, 115 Hibiscus Avenue. They are there
13 with the subpoena ready. They tell Flynn we are investi-
14 gating the October 1971 bank robbery of the Orange County
15 Trust Company in Middletown, New York, and we would like
16 to ask you some questions about your presence in the
17 Middletown area at that time.

18 He says you caught me unaware, I don't know
19 what you are talking about.

20 He denies, ladies and gentlemen, having been
21 in the Middletown area because he doesn't know at that time
22 that they found his fingerprint in the motel room.

23 Ladies and gentlemen, he gets the subpoena, you
24 will recall. He comes to New York with his attorney, Mr.
25 Chisholm. It becomes clear to him when he is in New York

1 gap-4

2 that he is a suspect in the investigation. Judge
3 Pollack orders him to give the hair samples. He doesn't
4 know what hairs have been recovered by the authorities
5 back at the time of the robbery. He doesn't know that
6 the test, in fact, is going to end up proving to be in-
7 conclusive. He doesn't know that when he is giving the
8 hair samples. He does know that Ford has been apprehended
9 and is in the custody of the authorities, ladies and
10 gentlemen.

11 Ladies and gentlemen, by April 15, 1974, when
12 Flynn fails to appear in New York to plead to the indictment,
13 after Mr. Rakoff has sent the letter to Mr. Chisholm with
14 the copy to Mr. Flynn advising him of the indictment and
15 the April 15 date, after the formal notice of indictment,
16 Government Exhibit 48 has been mailed out to Mr. Flynn
17 at the 115 Hibiscus address, by April 15, 1974, when Flynn
18 fails to appear before Judge Bauman and the bench warrant
19 is issued, Flynn has quit his job at Millis Transportation
20 without notice, never to be heard from again. He has
21 left his home, he has not advised his own attorney of his
22 new address. He has gone from the union and he has
23 disappeared.

24 When they search his house two days later on
25 April 17, 1974, they tell his wife about the indictment and

1 the warrant. Flynn is gone.

2 Where to, ladies and gentlemen?

3 We know the first stop is some buddies of
4 his from Chandler's Restaurant. You remember they have
5 taken him on down to Fat Tuesday's in New Canaan or Darien,
6 Connecticut, Mr. Steinberg's restaurant, and suddenly
7 Mr. Flynn is able to hide out at Steinberg's big house and
8 estate for the next 12 weeks. He is down there for the next
9 12 weeks. He has left his job which pays \$200 a week,
10 he is getting some room and board and some money from Mr.
11 Steinberg on the side.

12 While he is there during those 12 weeks, you
13 remember Mr. Steinberg's testimony, his wife Carol comes
14 down and visits him twice. This is after he has been
15 advised of the fact of the indictment and the warrant.

16 Mr. Chisholm may tell you that the letters to
17 Flynn got lost in Boston. Mr. Chisholm got his letter,
18 but Mr. Flynn's letter got lost.

19 Then perhaps his wife also forgot to tell Mr.
20 Flynn about the warrant and the indictment, the kind of
21 thing that might slip somebody's mind.

22 You remember there is also the call from Flynn
23 to Mr. Steinberg at Fat Tuesday's in October of 1974. This
24 is after Steinberg has been interviewed by the FBI, told
25

1
2 to keep on the lookout if this fellow Flynn shows up
3 again. Steinberg tells Flynn at that time the FBI has been
4 around, yes, and Flynn tells Steinberg he knows that the
5 FBI has had his house surrounded in Massachusetts.

6 Ladies and gentlemen, simply what is this
7 nonsense in 1977 about he didn't know he was wanted?

8 You have, in addition to all of that, ladies
9 and gentlemen, for almost three years, ntil February of
10 1977 at 2:45 in the morning the defendant James Flynn was
11 on the run, Florida, New Hampshire. That much you know
12 about with certainty. False identifications, the licenses
13 with John Chambers' name and Flynn's own picture, using
14 different names, the changes in appearnace, telling people
15 he is not married, and then after he is caught, after
16 he is caught, pretending he didn't know he was indicted,
17 pretending he had worked for the last three years at
18 Millis Transportation Company under his own name.

19 Ladies and gentlemen, in a very short time
20 Mr. Chisholm is going to be summing up. You are entitled
21 to some answers, ladies and gentlemen. Let's see how
22 Mr. Chisholm explains Flynn's fingerprint in the Robert
23 P. Barry room 123 of the Holiday Inn, how he explains the
24 phone calls the same night that this Robert P. Barry has
25 registered, the phone calls to Flynn in Boston and to the

number Ford used under the name Vincent Thomas in Greenwood Lake.

Let's see how he explains why Mr. Flynn pretended in February 1974 that he had never been in the Middletown area at a time when he didn't know, of course, that they had his fingerprint. Let's see how he explains the money order which Flynn sent on October 12, 1971, eight days before the robbery, to Ford's wife under the prior alias. Let's listen for that explanation about the \$11,357 in cash which this man who earns \$980 a month came up with at the closing.

If he is not running, if he didn't know he had been indicted, ladies and gentlemen, what is the explanation for his having false identifications? Why does he use false names? Why does he suddenly leave his union and his job? Why does he tell the man from Connecticut, whose house he hid in, that he knows his house has been surrounded by the FBI?

Ladies and gentlemen, if he didn't know he had been indicted, what happened to the copy of the letter that Mr. Rakoff sent to Mr. Chisholm with a copy to Flynn? What happened to the formal notice of arraignment? How is it that his wife never would have mentioned the fact that the agents came around looking for him and that the

agents told her that he had been indicted and was wanted in New York even when she is visiting him on those secret visits up to Connecticut?

Those questions, ladies and gentlemen, cry out for answers. Why did he run? Why did he hide? Why did he deny being in Middletown? Why was his fingerprint in the room? Where in the world did all that cash come from?

Ladies and gentlemen, innocent men don't run, they don't hide and they don't lie. They run, ladies and gentlemen, when they suspect that the jig is up and they hide, ladies and gentlemen, when they have reason to hide and they lie when they know that the truth would expose them.

Ladies and gentlemen, in conclusion, after summations and her Honor's instructions on the law, you will begin the very serious task of determining the guilt or innocence of a fellow citizen.

Without for one minute wishing to understate the seriousness or the solemnity of that task which is yours, I would suggest most respectfully that here your task is less than difficult.

James Flynn, Jim Harrington, John Chambers, Robert P. Barry, the man whose fingerprint is in the motel

1 room, who denied even being in Middletown, the man with
2 the phoney licenses who said he had no identification,
3 the man who left his union and his job in '74, but falsely
4 told the Judge in '77 he had been working there the last
5 three years under his own name, the man who sent the money
6 order to Ford's wife eight days before the robbery, the
7 man who looks so much like Ronald Christopher and did back
8 then, the man with a \$980 monthly salary, but \$11,357 in
9 cash in small denominations, older bills, shortly after
10 the robbery, James Flynn, Jim Harrington, John Chambers,
11 Robert P. Barry -- ladies and gentlemen, the evidence is
12 there, it is powerful, it is overwhelming and it proves the
13 guilt of this defendant beyond any reasonable doubt.
14

15 Thank you very much.

16 THE COURT: Thank you, Mr. Buchwald.

17 At this time we are going to take a ten-minute
18 recess. The jury is excused.

19 (Recess.)

20
21 (continued on next page.)
22
23
24
25

d 5 AM

1 jgjb

2 considering and weighing the evidence, and he is not
3 entitled to any more and he is not entitled to any less,
4 if you do, and consider all the evidence, I think you
5 will find that there is a doubt for which you can attach a
6 reason, a reasonable doubt, and Mr. Flynn is entitled to the
7 benefit of that doubt.

8 THE COURT: Thank you, Mr. Chisholm.

9 Mr. Buchwald.

10 MR. BUCHWALD: Just one moment, your Honor.

11 Ladies and gentlemen, I am going to be brief.
12 I really am going to be brief. And this is in no particular
13 order.

14 There is something I do want to address myself
15 to right up front before I try to hit as many of Mr.
16 Chisholm's points as possible, and that is, I think, in
17 listening to Mr. Chisholm's summation, that there was at
18 least the suggestion at various times that perhaps some
19 people tried to suggest answers to witnesses.

20 MR. CHISHOLM: I didn't suggest that. I
21 didn't mean you. I didn't suggest you suggested anything
22 to any witness.

23 MR. BUCHWALD: I would ask the ladies and
24 gentlemen of the jury, if you think that any member from
25 the government side tried to suggest answers to the

witnesses or coaxed witnesses into giving certain statements as opposed to others, then I think you probably won't even want to deliberate in that room, you would just want to have an acquittal right now, as soon as you finish. If you think that for one minute, and if you could possibly think that, after all the people who took the stand and sayd, "Gee, I can't identify. Even some FBI agents, one of them couldn't give positive identifications. They saw him once back in '74.

Mr. McCoy told you, didn't wait for Mr. Chisholm, that he came out when the government was asking him questions. Mr. McCoy told you about the thing with Mr. Christopher, on direct examination. He told you about the identification that he made of Mr. Ford at the last trial. That didn't wait for Mr. Chisholm.

If you think for one moment that anybody on the government side was trying to stick some answers into the mouths of some witnesses, then don't even go into the deliberation room.

This is some of the quick points that Mr. Chisholm made. He was making a point, I think, about Mr. Costa, the trooper's testimony, and there was some kind of argument about the trooper didn't know the name of the registrar. I mean, that had to be among the

1
2 silliest questioning asked during the course of the trial
3 and it certainly has to be a silly argument now.

4 I mean, whichever way you spell it, you don't
5 spell it the three ways that are on the three licenses,
6 ladies and gentlemen, and you don't have to be an expert
7 in handwriting, or an expert in license identification to
8 know that when you have one person's picture on three
9 licenses, but it is in two names, that there is something
10 fishy, that there is something phony about some of them.

11 So I don't know what point Mr. Chisholm was
12 trying to make in the questioning and I certainly don't
13 understand the argument.

14 He suggested, I believe, that Agent Pieroni --
15 this was suggested when he was cross examining Agent
16 Pieroni -- that maybe Agent Pieroni was lying to you,
17 that Agent Pieroni didn't know things were recorded up
18 in Boston.

19 So who was it who subpoenaed the Magistrate in
20 Boston to see if there was a recording and to have it
21 brought down here? The government did, and the man showed
22 up, and you can compare the testimony of Agent Pieroni,
23 page 132 of the transcript:

24 "When the Magistrate told Mr. Flynn that an
25 indictment had been returned against him on April 3, 1974

1 and that for failure to appear for an arraignment a bench
2 warrant was issued for his arrest, Mr. Flynn said that he
3 had never been informed that an indictment was returned
4 against him."
5

6 Agent Pieroni's testimony. Mr. Cooperstein's
7 testimony at page 7806 of the transcript. This is the
8 clerk of the Magistrate before whom this occurred. This
9 is now in the afternoon session.

10 "Q Did Mr. Flynn say anything about the indictment
11 in this case?

12 "A He did in response to a question by his attor-
13 ney as opposed to the court.

14 "Q Would you say what he said and put in context
15 the comment that had been made just before?

16 "A Well, my recollection is that his attorney
17 said to the court that he had never -- he meaning Mr. Flynn --
18 had never been notified of his arraignment and he turned to
19 Mr. Flynn and Mr. Flynn said yes."

20 Ladies and gentlemen --

21 MR. CHISHOLM: You corrected that later on,
22 saying "formally notified." That is the distinction.

23 MR. BUCHWALD: You stuck the word in his mouth,
24 and the tape was here if you wanted to play it, and if you
25 are going to accuse agents of lying or tailoring their

1 testimony, you certainly had the wherewithall and the
2 means to get the very words in front of the ladies and
3 gentlemen of the jury.
4

5 MR. CHISHOLM: Play it. It says "formally."

6 MR. BUCHWALD: He suggested to you that Mr.
7 Engel perhaps tailored his testimony. That is Govern-
8 ment's Exhibit 206, the actual page of the transcript is
9 in evidence before you and it was read to you. And the
10 suggestion is that, well, Mr. Flynn was really telling
11 the truth because he really worked for three years during
12 that one and three-quarter-year period back from '72 to
13 '74 and, heck, from the context you can't tell if Flynn
14 meant these past three years or the three years before
15 that.

16 The question that was asked by the judge in
17 this court house was, "Do you have a job?" Not did you
18 ever have a job. What would a judge be interested in
19 ancient history for? Here was a man brought in before a
20 judge in the court house. The question is, "Does Mr.
21 Flynn have a job?" The answer is, "Yes, your HONOR. I
22 have been working for Millis Transportation out of Local
23 25." And you can read that yourselves, you can have it
24 read to you. There is simply no ambiguity about it.

25 Mr. Engel testified that in the context of the

2 total proceedings that were going on that day it was
3 clear and unequivocal that Mr. Flynn was talking about the
4 last three years. And Mr. Chisholm certainly could have
5 asked Mr. Engel about the context of those total pro-
6 ceedings and what they were and just what that context was,
7 how it could be so clear that Mr. Flynn was talking about
8 the most recent three-year period.

9 There were questions about no geographical
10 accents of people in the bank. Remember questions on cross
11 examination? Of course there isn't the slightest suggestion
12 in the evidence that either Mr. Ford or Mr. Flynn in fact
13 have a geographical accent.

14 But if they did, if they had some kind of
15 Boston or Massachusetts accent, do you think that they
16 might try to veil it when they were in the bank?

17 And how much, ladies and gentlemen, of a Boston
18 accent? If they had it, if there was any evidence of that,
19 how much of a Boston accent comes through with the words
20 "Time, time. Where is the bags? Where is the bags?"

21 I mean, this wasn't a lecture being given by
22 a college professor. There were a few short phrases,
23 short words, "Where is the bags? Where is the bags? Time,
24 time," as a signal for people to leave.

25 There is the argument: after all that happened

jgjb

1 in the trial, finally in the face of the false identifica-
2 tions, in the face of the use of false names, the three
3 years of flight, the call to Mr. Steinberg, the acknowledge-
4 ment that he knew that his house was surrounded, the letter
5 from Mr. Rakoff to his home with the copy to Flynn, the
6 formal notice of arraignment, there is at last the con-
7 cession that Mr. Flynn fled, that he knew about the
8 indictment, that he knew that there was a warrant. And
9 Mr. Chisholm suggests, well, maybe he was afraid, an
10 innocent man would be afraid.

11
12 Ladies and gentlemen, what was there to be
13 frightened about from those scientific tests? What was
14 it about the fingerprint test that scared Mr. Flynn, or
15 about the hair tests? Because he didn't know which
16 hairs had been recovered, which his hairs were going to be
17 compared to.

18 Ladies and gentlemen, you don't leave your
19 family, leave your job, leave the union because you are
20 an innocent man who is afraid that the government is
21 wrongly or falsely accusing you of something.

22 Here was a man. He wasn't even arrested.
23 The government can't come up to him and say, "You are
24 arrested." He was subpoenaed. He was brought on down.
25 Then he was given notice that he is indicted.

1
2 He has an opportunity to come into court and
3 say guilty or not guilty. Bail will be set.

4 I mean, he was not being treated in some
5 horrible, terrible way. This was a very, very liberal,
6 enlightened approach. A man has the opportunity to come
7 in and say guilty or not guilty. There will be a trial.
8 Wouldn't even be in custody.

9 What was there to be afraid of? What was there
10 to be afraid of? And does it really make sense, because
11 there is some kind of fear that you are going to be treated
12 wrongly or unfairly, that you just leave your family, just
13 like that, you leave the union, you leave the company as
14 soon as you get wind that you are a suspect, as soon as
15 the government has indicated that yes, in fact you are a
16 suspect, has asked for the fingerprints, the hair samples,
17 as soon as you learn that Mr. Ford has been apprehended
18 and is in custody?

19
20 (Continued on next page.)
21
22
23
24
25

1
2 Ladies and gentlemen, there is the -- there
3 was something else about -- I think Mr. Chisholm was talking
4 about McCoy, "cuckoo" he says. Ladies and gentlemen,
5 the main defense here is what I call an ostrich defense.
6 You stick your head in the sand, you forget the cash, any
7 mention. Was there a concession that it was now Mr.
8 Flynn after all of that at the trial? Is it now conceded
9 that Mr. Flynn was the man there at the South Weymouth
10 Bank with the \$11,357 in cash? Any suggestion of
11 where Mr. Flynn could have gotten that much cash on his
12 salary?

13 MR. CHISHOLM: I have a motion to address
14 to the Court right now, your Honor.

15 THE COURT: Approach the bench.

16 (At the side bar.)

17 MR. CHISHOLM: Your Honor, the defendant
18 moves for a mistrial for the reason that the most recent
19 point of argument by Mr. Buchwald is in effect commenting
20 on the defendant not taking the stand.

21 MR. BUCHWALD: Your Honor, there are many
22 other ways of adducing evidence as to other sources of
23 income. Anybody else could have been called who Mr. Flynn
24 worked for. Anybody else who gave Mr. Flynn money could
25 have been called to testify as to giving him money. If it

1 gab-2

2 had been withdrawn from a bank, the bank could have been
3 called, bank records could have been produced. There
4 are a multitude of alternative ways other than the defendant
5 himself taking the stand.

6 MR. CHISHOLM: Not if he was the only source
7 of information.

8 THE COURT: I think that the Government is
9 permitted in summation of this kind to comment on the fact
10 that the defendant failed to produce other evidence to counter
11 act any evidence of the Government.

12 As Mr. Buchwald points out, this is not a
13 comment on the failure of the defendant himself to take the
14 stand, but this is a comment on the defendant's failure
15 to produce evidence, any other evidence at all from which
16 the jury could find that he got this money in a legitimate
17 fashion.

18 MR. CHISHOLM: If your Honor please, if he
19 had this in his house, in a strong box or whatever, unknown
20 to any relative or anyone else that's alive today, there
21 would be absolutely no way -- it was his, that he
22 collected or somebody gave him -- there would be absolutely
23 no way of explaining that money other than him taking the
24 stand.

25 THE COURT: That's not necessarily so. You are

1 gab-3

2 suggesting that that is the only way that he could have
3 accumulated money, that is, by he alone knowing of its
4 existence. We would have to find that that is the
5 only possible explanation for the money. That is, the
6 only possible explanation for the money would be one that
7 the defendant himself could give in order to sustain this
8 motion. But as the Government points out, there are many
9 possible explanations.

10 So it can't be construed as a comment on
11 the defendant's failure to take the stand.

12 The motion for a mistrial based on that is
13 denied.

14 (In open court.)

15 MR. BUCHWALD: Where did that money come from
16 and where, ladies and gentlemen -- where is Mr. Chisholm's
17 explanation of the money order sent to Ford's wife under
18 the prior alias eight days before the bank robbery? Mr.
19 Chisholm never even referred to that in his summation.

20 MR. CHISHOLM: There are a lot of things that
21 haven't been referred to. I could have talked for two
22 hours.

23 MR. BUCHWALD: You did talk for two hours.

24 Ladies and gentlemen, in addition to the
25 ostrich defense, evidence of flight, you can't explain the

1 gab-4

2 names, you can't explain the alias. He was afraid and
3 so he left his house, left his family, left his job,
4 left his union, because somebody might not give him a fair
5 trial, and then call Mr. McCoy cuckoo. He has to be
6 the same driver coming in and out. Mr. Chisholm would
7 like to be the same driver coming in and out. If you recall
8 the testimony, ladies and gentlemen, Mr. McCoy -- how did
9 he first even notice the car? The New Jersey license
10 plate and the New York inspection sticker. That's what
11 first brought it to his attention. He is sitting in his
12 girl friend's car having the hamburger.

13 What point do you even see in the New Jersey
14 license plate and the New York inspection sticker? Remember,
15 there's only one plate on the car, one plate on the car. The
16 other plate Mr. Hirning had still on his own car when he is
17 notified by the police. He still has one plate, he takes
18 it off, he produces it here. You remember the stipulation.
19 He gives it to the prosecutors in September of '75. This
20 is the only plate that is on the stolen car that is
21 recovered. When is it noticed? When could it be noticed
22 by Mr. McCoy, just one plate? Is it on the front or the
23 back? It is on the back of the car, POP784.

24 Mr. McCoy is 16 years old, agents are saying
25 the drive, and asking him questions, what does the driver

1 gab-5

2 look like?

3 He says he has blue eyes and blondish, dirty blond
4 hair. He is sitting down.

5 What is your best estimate of his height?

6 Those were guesstimates. McCoy said they are
7 sitting down, but guesstimated he looked about six feet.
8 They are talking about drivers.

9 At that point in time when he is being inter-
10 viewed right after the bank robbery, people aren't focusing
11 in on the driver, did the driver switch positions or did
12 the passengers switch positions in one car to another car?
13 The first time it even catches his attention is when he
14 sees the New Jersey plate even though it bears a New York
15 inspection sticker, and he couldn't see the New Jersey
16 license plate until the car coming in has passed McCoy,
17 because that one license plate is on the rear of the car.
18 Then he does see the blue car which is wheeled right out
19 after the brown car backs in.

20 Ladies and gentlemen, there is one other defense
21 here that was thrown out, the moustache defense, I think.

22 First, the interesting thing about the moustache
23 defense, it is clear -- there was the cross-examination
24 of Miss Whooley. He tries to downgrade Miss Whooley's
25 identification because the car went fast, it was a fleeting

1 gab-6

2 glance and all that.

3 Miss Whooley must be 100 per cent right that
4 everybody was clean-shaven. That is a part that Mr.
5 Chisholm would like. Everybody is clean-shaven. In
6 the first place, that really doesn't help the defense at
7 all. There is no question that Mr. Flynn had no moustache
8 back in '71.

9 You have the 1974 photograph, 29A for identifica-
10 tion, without a moustache. You have the 1968 photograph,
11 Government Exhibit 92A, December '68, without a
12 moustache. You have Mr. Joyce of the FBI saying that in
13 February '74 he had no moustache. Mr. Derian of the bank,
14 his recollection of Flynn was a fellow without a moustache.

15 Mr. Miller from Millis Transportation, no
16 moustache. The real John Chambers who knew him for a long
17 time, they grew up together and then knew him in the union,
18 but hadn't seen him in three and a half years, never knew
19 him with a moustache. So this moustache defense -- Miss
20 Whooley didn't see anybody with a moustache -- doesn't help
21 Flynn at all. It is clear that Flynn has the moustache
22 when he started to run. Flynn has the moustache when
23 he is arrested on February 14 of '77, coming back from
24 Florida on that Greyhound bus, and apparently the date
25 was February 12 of '77, coming back and probably being
dropped off at Hartford because that is the route

1 gab-7

2 he is on now going up toward the Massachusetts area in the
3 car.

4 It dzoesn't help him at all.

5 Mr.Chisholm suggests that the driver was
6 clean-shaven. Ford had a moustache, so Ford must be
7 innocent. I think that that's the argument.

8 This innocent guy sure does some pretty peculiar
9 things. He quits his job, leaves town, leaves his furni-
10 ture behind right after the robbery, becomes John August
11 in Chicago, arrested climbing down the rope ladder on
12 October 11 of '73, he is living in town under an alias,
13 working in Middletown, cashing his checks right across the
14 street from the bank that is robbed, eating lunch at
15 the place across the street.

16 The payroll checks from Reid's you will see
17 are -- once a week and they are all issued every seven
18 days. On the Wednesday of the week the payroll ends,
19 Wednesday of the week. He is familiar with the Brike's
20 procedure just from his observations from Lloyd's each
21 Wednesday. He is the man who always dropped off at the
22 Pioneer Restaurant which is next door from which the beige
23 Plymouth is stolen.

24 He doesn't look like he is quite this innocent
25 babe that Mr. Chisholm would make him out to be.

You also have Mr. Partridge who said that the

1 gab-8

2 moustache was not a permanent appendage of Mr. Ford. It
3 would come on and go off even when Ford lived as Vincent
4 Thomas at Greenwood Lake. You know from the photograph
5 of Mr. Ford, which Miss Whooley picked out, that at the time
6 that photograph was taken Ford had no moustache. You
7 know that Ford had no moustache when he was living in
8 California under the name of Fitzgerald. You have that
9 absence of a moustache on the photograph in the California
10 license. You know that Ford had no moustache when he
11 was living in the Concord as Thomas, no moustache in
12 that photograph from the Concord.

13 Ladies and gentlemen, even if you assume --
14 let's assume that he does have the moustache on the 19th
15 when Mr. Petrie sees him and on the 22nd, and this is --
16 again assuming -- Miss Whooley -- it is conceivable she
17 has just missed the moustache. The car is going by, she
18 sees a lot of things, she gives an identification. Even
19 if you assume she is right, that the person she saw had no
20 moustache, if you think about it, ladies and gentlemen, these
21 two -- the people in the bank are going to wear ski masks,
22 right, except for the one fellow who has the Halloween mask,
23 the shorter fellow with the shotgun who has the Halloween
24 mask. The others have ski masks. Most probably you
25 wouldn't want to have a moustache on under the ski mask.

1 gab-9

2 If I showed up after this week, ladies and
3 gentlemen, and the last day I suddenly had a moustache,
4 you would all notice it and you would say that must be
5 a paste-on, Mr. Buchwald can't grow a moustache on overnight.

6 If you knew somebody who you had known for
7 several months and they usually had a moustache and all of
8 a sudden one day they cut it off -- he is out of town
9 for two days, he goes to Boston, and he comes back with a
10 paste-on, and he is only in town one or two more days and
11 leaves -- if you are used to seeing him with a moustache,
12 you would never notice the difference. Whether you take
13 it one way, assume Miss Whooley had to be right about the
14 absence of the moustache, or whether you take it the other
15 way and say Miss Whooley could have been wrong about the
16 moustache, either way, ladies and gentlemen, the moustache
17 defense doesn't help. It certainly doesn't help Flynn who
18 didn't have a moustache, who grew the moustache more
19 recently while he was on the run in order to help conceal
20 himself from the authorities.

21 Ladies and gentlemen, there is the suggestion
22 once again that there is no date on the fingerprint, but you
23 do know that it is that very night, October 18 of 1971 when
24 "Richard P. Barry" is registered in the motel, that the calls
25 are made to Flynn's home in Boston, and to the number that

gab-10

1 Ford uses in Greenwood Lake. It is that night, October
2 18 of 1971.
3

4 The fact, ladies and gentlemen, when the agents
5 come by in February of '74 and they say, we want to question
6 you about your presence in the Middletown area, and he says
7 I don't know what you are talking about, Mr. Chisholm would
8 have that as a denial that he is involved in the bank
9 robbery.

10 Ladies and gentlemen, an innocent man -- what
11 would an innocent man say in those circumstances?

12 He would say I have been in Middletown, but I
13 don't know anything about a bank robbery. That's the way a
14 person would react in those circumstances. You don't just
15 deny it. I don't know what you are talking about. The
16 reason that he felt he could get away with that denial is
17 because he didn't know that the fingerprint had been found,
18 and the last thing he wanted to do was put himself anywhere
19 near Middletown, ladies and gentlemen.

20 As to fingerprints or handwriting, this like
21 that, let me remind you, defense doesn't have to do anything,
22 nobody has to twist their arm. They can call a hand-
23 writing expert. They can call a fingerprint expert. The
24 Government is not the only one that is permitted to call
25 experts. If they think it is not the fingerprint or the

1 gab-11

2 handwriting is different, the signatures that you saw
3 on all of those bank documents and on the license and on
4 the money order differ, they call a handwriting expert
5 and have that testimony come right in before you.

6 Ladies and gentlemen, you are in a very few
7 moments going to hear her Honor's charge to you and
8 instructions on the law. I ask you to pay careful attention
9 to all of those instructions, most particularly to the
10 elements of the crime, to the concepts of aiding and
11 abetting and the principle of co-conspirator liability,
12 the responsibility of co-conspirators for the actions and
13 statements of each other committed during and in furtherance
14 of the conspiracy.

15 I also ask you to pay especially close attention
16 to her Honor's instructions on reasonable doubt.

17 MR. CHISHOLM: Your Honor, as I understand,
18 the purpose now is just for rebuttal. Now he is going --
19 this is not rebuttal. This is his direct case which should
20 have -- or it is a repetition of it.

21 THE COURT: Yes. It doesn't rebut anything --

22 MR. BUCHWALD: I will move on, your Honor.

23 THE COURT: -- Mr. Chisholm said.

24 MR. BUCHWALD: I would certainly ask you ladies
25 and gentlemen of the jury to pay careful attention to what a

1 gab-12

2 reasonable doubt is and what it is not.

3 Ladies and gentlemen, in the final analysis
4 I would like you to think back again to the money order
5 eight days before the robbery, to the fingerprint, to the
6 phone calls, to the cash at the closing, to the false
7 denial that he had ever been in the Middletown area, to the
8 whole period of flight with the use of aliases and the
9 use of false identifications.

10 I don't know if I have addressed myself to
11 every argument that Mr. Chisholm made. I have tried to
12 do that.

13 If you have any questions about the testimony
14 you can have any part of that testimony read back to you.
15 You can have any of the exhibits that are in evidence
16 brought into your deliberation room.

17 MR. CHISHOLM: Your Honor, he is arguing his
18 case.

19 THE COURT: He is summing up now.

20 MR. BUCHWALD: You can consider all of the
21 evidence. Reason with one another, don't get mad at
22 one another. Be true to your oaths and to the rule of
23 law and do justice, ladies and gentlemen, justice in this
24 case.

25 Thank you.

1 gab-13

2 THE COURT: All right. Thank you, Mr. Buchwald.

3 At this time we are going to recess until 2:30
4 for lunch, after which the Court will charge the jury.

5 The jury is excused now until 2:30 for lunch.

6 Before leaving I want to caution you again
7 about discussing the case among yourselves because you do
8 not have the entire case. You do not have the entire
9 case until after the Court has charged you on the law and
10 you have retired to the jury room to deliberate. That's
11 the only time you are permitted to discuss the case among
12 yourselves.

13 Please do not discuss the case among yourselves
14 and obviously with nobody else during this luncheon recess.

15 Everyone in the courtroom remain seated until
16 the jurors have left.

17 (Jury absent.)

18 MR. BUCHWALD: Can we cover one thing while we
19 wait?

20 THE COURT: All right.

21 MR. BUCHWALD: Your Honor, in reviewing the
22 record for May 18, which is yesterday, I noted that a
23 mistake had been made in the transcription of the stipu-
24 lated testimony of Mr. Kettle. What it was is we had
25 entered into stipulations 204 and 204A. 204 was the

1 gab-14

2 stipulation and 204A was the testimony of Mr. Kettle which
3 we agreed to read. It was a marked up version of his
4 1975 testimony.

5 On the marked up version, we know an entire page
6 was being deleted, instead of crossing out the whole page,
7 we crossed out the page number. This way we could both
8 read the page ourselves and know we intended to read it. I
9 did not read certain pages where we only crossed out the
10 page number, but nonetheless, they appear in the transcript.

11 If I might indicate the place that, in fact,
12 was not stipulated to and was not read to the jury. It
13 starts at page 744, line 13 and continues through and includ-
14 ing page 747, line 14. That section from that first place
15 to the second place, while it appears in the transcript,
16 in the transcript of yesterday, in fact, was not read to
17 the jury and was not stipulated to. I think that that
18 will clear up the record.

19 THE COURT: Do you agree, Mr. Chisholm?

20 MR. CHISHOLM: I don't dispute it, your Honor.
21 I am not bringing any issue about that.

22 THE COURT: All right, we will recess until 2:30.

23 (Luncheon recess.)
24 -----
25

(In open court; jury present.)

CHARGE OF THE COURT

(Motley, J.)

THE COURT: Ladies and gentlemen:

Before formally beginning the charge, I would want to thank each of you for the careful attention which you have paid to the testimony and other evidence in this case as it has come in.

I know that in order to serve on this jury, each of you has had to make some personal or business sacrifice in order to do so, and in that connection I would like to remind you of something I believe I told you when the trial commenced, and that is that we all have a stake in the fair and impartial administration of justice, and that trial by jury is a basic and cherished institution in our system.

Therefore, I am sure that any business or personal sacrifice that you had to make to serve on this jury, you were glad to do so in the interest of the fair and impartial administration of justice.

Before formally beginning the charge, I would

1 gab-2

2 also like to thank counsel on both sides of this case for
3 their cooperation with the Court and to congratulate each
4 of them on the high degree of professional skill which
5 each has demonstrated throughout this trial on behalf of
6 his particular client.

7 I trust that you will bear with me, ladies and
8 gentlemen, and give me that same degree of attention which
9 you have given throughout the trial so that you may care-
10 fully understand the legal principles which you are to
11 apply to the facts in this case as you find them.

12 As you approach the performance of your function
13 in this case, which is to determine the guilt or innocence
14 of this defendant with respect to a particular charge, and
15 you must determine his guilt or innocence separately as
16 to each of the four charges, I want to remind you that it is
17 your duty to weigh the evidence in the case calmly and
18 dispassionately, without sympathy or prejudice for or against
19 either the Government or the defendant.

20 I want to remind you also that every defendant
21 appearing before this Court is entitled to a fair and
22 impartial trial regardless of his occupation or station
23 in life. Also, the fact that the Government is a party
24 here, that the prosecution is brought in the name of the
25 United States of America entitles it to no greater

1 gab-3

2 consideration than that which is accorded to any other
3 litigant in a lawsuit. By the same token, it is entitled
4 to no less consideration, and that is because under our
5 legal system all parties, Government and individuals alike,
6 stand equal before the Court.

7 There are four separate counts in this indict-
8 ment, and the word "count" is simply another word for
9 charge. When I say count, I mean charge.

10 Your verdict, as I said, must be based solely
11 on the evidence presented here in court as to each of these
12 charges.

13 As I told you repeatedly before, the evidence
14 in a case consists of three things, the testimony which you
15 heard from the witnesses who took the witness stand; secondly,
16 the exhibits which were actually received in evidence and,
17 finally, the stipulations as to certain facts which the
18 lawyers entered into and nothing else. That is, your
19 verdict as to each count must be based solely on the evidence
20 in the case. And, of course, your verdict as to each
21 count must be unanimous and must be either guilty or not
22 guilty.

23 Now, as the jurors in this case, you are the sole
24 and exclusive judges of the facts. This means that you
25 pass upon the weight of the evidence. It means that you

1 gab-4

2 determine the credibility, that is, the believability
3 of the witnesses, and it means that you draw such reasonable
4 inferences as may be warranted by the testimony and the
5 exhibits and the stipulations in the case.

6 Now, again with respect to any matter of fact,
7 it is your recollection of what the evidence shows
8 and yours alone which governs. Anything that counsel for the
9 Government may have said or anything which counsel for the
10 defendant may have said or anything which I may have
11 said as to any matter in evidence, any factual matter, is
12 not to be substituted by you in lieu of your own recollec-
13 tion as to what the evidence is.

14 If I should refer to any fact in evidence here,
15 again, if it doesn't accord with your recollection, it is
16 your recollection which governs, not mine.

17 My function is to instruct you as to the law
18 applicable to the case, and you should accept the law as
19 I state it to you in these instructions and apply the law
20 to the facts as you find them.

21 The logical result of that application is a
22 verdict in the case with respect to each count, which I have
23 said must be returned separately as to each count.

24 I want to caution you that you are not to single
25 out any one instruction alone as stating the law, but you

1 gab-5

2 must consider these instructions as a whole.

3 You are not to assume that I have any opinion
4 as to the guilt or innocence of this defendant or as to
5 the truth or falsity of any of the charges made against
6 him in the indictment.

7 The fact that I have denied motions or granted
8 motions in the course of the trial is not to be taken by
9 you as any indication that I believe the defendant to be
10 guilty or not guilty or that the charges in the indictment
11 are true or false.

12 If during the course of the trial a question
13 was asked and an objection interposed and I sustained the
14 objection, you are to disregard the question and any
15 alleged facts contained in that question.

16 Similarly, if I ruled that an answer be stricken,
17 you are to disregard both the question and the answer in your
18 deliberations.

19 During the course of this charge I may refer
20 to some of the facts in evidence. The fact that I refer
21 to some of the evidence or some of the facts or some of
22 the testimony does not mean that I think that is the only
23 evidence or the most important evidence that you should
24 consider.

25 In deciding this case, you must consider all the

1 gab-6

2 evidence. You must consider all the evidence in the
3 case when you are considering whether the defendant is
4 guilty or not guilty of a particular charge.

5 With respect to the testimony of a particular
6 witness, you must consider all of the testimony of a
7 witness. That is, you must consider the direct examination
8 and the cross-examination of the witness.

9
10
11 (continued on next page.)

12 Endl PM

4:22 pm
charge

1 jgjb 1

1026

2 Now, as you well know, the defendant has
3 entered a plea of not guilty to each of the four charges,
4 or counts, in this indictment. Consequently, as I told
5 you when the trial commenced, if the defendant is to be
6 found guilty of a particular charge, the government has
7 the burden of proving that the defendant is guilty of that
8 particular charge beyond a reasonable doubt.

9 Now, in a criminal case that is a burden that
10 never shifts. It remains upon the government throughout
11 the entire trial. Now, it was a burden that the government
12 had when the trial commenced and it remains upon the
13 government throughout the entire trial.

14 As I told you, a defendant in a criminal case
15 does not have to prove his innocence. On the contrary,
16 in a criminal case a defendant, under our system, is pre-
17 sumed to be innocent of a particular charge made against
18 him in an indictment.

19 Now, as I said, this presumption of innocence
20 was in the defendant's favor when the trial started, it
21 remained in his favor throughout the trial, and it is in
22 his favor even as I instruct you now. This presumption
23 of innocence remains in the defendant's favor throughout
24 the course of your deliberations in the jury room. This
25 presumption of innocence is removed only if and when, after

1
2 your deliberations in the jury room, you come to the con-
3 clusion that the government has sustained its burden of
4 proof as to the particular charge you are then considering,
5 and that is to prove the defendant guilty of that particular
6 charge beyond a reasonable doubt.

7 Now, the question which naturally comes up is:
8 what is a reasonable doubt? The words almost define them-
9 selves. Reasonable doubt is a doubt founded in reason
10 and arising out of the evidence in the case or the lack
11 of evidence. It is a doubt which a reasonable person has
12 after carefully weighing all the evidence, the kind of
13 doubt which would make one hesitate to act. It means a
14 doubt that is substantial and not merely shadowy.

15 Reasonable doubt is one which appeals to your
16 reason, your judgment and your common sense. It is not
17 caprice, whim or speculation. It is not an excuse to
18 avoid the performance of an unpleasant duty. It is not
19 sympathy for a defendant.

20 If, after fair and impartial consideration of
21 all the evidence, you candidly and honestly say that you
22 are not satisfied of the guilt of this defendant as to
23 a particular charge and that you do not have an abiding
24 conviction as to this defendant's guilty, such a conviction
25 as you would be willing to act upon unhesitatingly in

1 important and weighty matters in the personal affairs of
2 your own life, then you have a reasonable doubt, and in
3 that circumstance it is your duty to acquit this defendant
4 of that particular charge.
5

6 On the other hand, if after such a fair and
7 impartial consideration of all the evidence you can can-
8 didly and honestly say that you are satisfied of the guilt
9 of this defendant, that you do have an abiding conviction
10 of this defendant's guilt, such a conviction as you would
11 be willing to act upon unhesitatingly in important and
12 weighty matters in the personal affairs of your own life,
13 then you have no reasonable doubt and in that circumstance
14 you may convict the defendant.

15 A reasonable doubt does not mean a positive
16 certainty, beyond all possible doubt. And that's because
17 it is practically impossible for a person to be absolutely
18 and completely convinced of any controverted fact, which
19 by its nature is not susceptible to mathematical certainty.

20 In consequence, the law in a criminal case is
21 that it is sufficient if the guilt of a defendant has been
22 established beyond a reasonable doubt, not beyond all
23 possible doubt.

24 Now, you as jurors are the sole judges of the
25 credibility of the witnesses who took the witness stand

here and who testified before you, and you are the sole judges of the weight to be accorded their testimony. Now, you know, of course, that there is no automatic way to determine who is telling the truth and who is not. Credibility can be equated with believability. If a witness is credible, you say he is believable and reliable. If he is incredible, you say he is unbelievable. There is nothing mysterious about these words.

Now, by what yardstick are you to judge the credibility of the witnesses? Each of you has given careful attention to the testimony as it came from the witnesses themselves. You observed the witnesses. Issues of fact are presented for your determination, and to a large extent the resolution of them depends upon the credibility which you attribute to the witnesses and to the support and lack of support which each witness received from other evidence in the case.

Your duty therefore is to decide the disputed issues of fact, and in doing so use your logic, your reason and your common sense, and do not be sidetracked or diverted or distracted by what you consider to be a minor or insignificant detail or irrelevancy, or by what you consider to be not an appeal to your reason or logic but to mere sentimentality or unthinking passion. I repeat: Use your

common sense.

You should carefully scrutinize all the testimony given, as I said before, both direct and cross examination, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether the witness is worthy of belief.

Consider each witness' intelligence, motive, and state of mind and demeanor and manner while testifying on the witness stand. Consider the witnesses' ability to observe the matters as to which he or she has testified and whether he or she impresses you as having an accurate recollection of these matters.

Now, inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently, and innocent misrecollection, like failure of recollection is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or intentional falsehood.

Now, in determining the credibility and the

weight to be given to the testimony of any witness, you must give equal consideration to the testimony of government employee witnesses. The mere fact that they are employees of the government entitles them to no more and no less consideration than that accorded any other witness.

Now, if a potential witness could have been called by the government or by the defendant and neither side called him or her, then you may infer that the testimony of the absent witness might have been unfavorable either to the government or to the defendant or to both of them. But, on the other hand, it is equally within your province to draw no inference at all from the failure of either side to call a witness. You should bear in mind, however, that there is no duty upon either side to call a witness whose testimony would be merely cumulative of testimony already in evidence.

After making your own judgment you will give the testimony of each witness such credibility, if any, as you think it deserves. If you find that any witness has wilfully testified falsely as to any material matter, you may reject the entire testimony of that witness or you may accept such part or portion as commends itself to your belief or which you find corroborated by other evidence in the case.

1
2 Again, as I told you when you were being
3 selected and before the trial commenced, an indictment
4 returned by a grand jury sitting in this court house is
5 not proof or evidence. It is merely an accusation or a
6 charge or a series of charges, and an indictment is a
7 technique or method which we use in our system whereby
8 persons who are accused by a grand jury of crimes are
9 brought into court and then their guilt or innocence is
10 determined by a petit jury, such as you are, or a trial
11 jury.

12 Therefore the indictment in this case has no
13 evidentiary value and it should not be considered by you
14 as proving or tending to prove any of the crimes charged
15 in it.

16 Now, again, with respect to each charge in
17 the indictment, the government has the burden of now prov-
18 ing to the jury that the defendant is guilty of a particular
19 charge set forth in the indictment beyond a reasonable
20 doubt.

21 What I am going to do now is to read each
22 charge in the indictment to you. Then I am going to tell
23 you what the essential elements of that particular charge
24 are, that is, what the government must have proved to your
25 satisfaction beyond a reasonable doubt before you can find

the defendant's guilt of that particular charge.

The indictment in this case names two defendants, Richard Ford and James Flynn. Only one of these defendants, of course, James Flynn, is now on trial before you. Therefore he is the only person whose guilt or innocence you are to announce in your verdict as to each count, although as I will explain to you shortly, in considering his guilt or innocence you may have to determine the nature of the participation, if any, of the other named defendant, Richard Ford, in this case.

In determining the innocence or guilt of this defendant, you must bear in mind that guilt is personal. By that I mean the guilt or innocence of this defendant on trial must be determined as to him separately with respect to his participation in these crimes, and that determination regarding this defendant's participation, again, must be based solely on the evidence in the case or the lack of evidence as to him.

Not during the trial, at various times there has been mention of the fact that in September, 1975 there was a trial in the case of defendant, Richard Ford. This was done only to make the sequence of events clearer to you. It is not material to your deliberations as to this defendant and you should not speculate at all about

1
2 the results of the trial had in September, 1975 involving
3 Mr. Ford.

4 I therefore instruct you that you are not to
5 speculate about the result of that trial and that whatever
6 the result was it is irrelevant to your deliberation as to
7 the guilt or innocence of this defendant now on trial.

8 Now, as I pointed out, you may, however, con-
9 sider the evidence pertaining to the co-defendant Richard
10 Ford which has been introduced in this trial, including
11 evidence introduced here concerning events which occurred
12 at the Ford trial together with all of the other evidence
13 introduced at this trial in determining whether or not the
14 defendant now on trial, James Flynn, is guilty or not guilty.

15 Now, as you know, the indictment in this case
16 arises primarily out of the October 20, 1971 robbery of
17 the Orange County Bank in Middletown, New York. The indict-
18 ment charges four separate federal crimes which the indict-
19 ment alleges were committed in connection with the planning
20 and execution of that particular bank robbery.

21 Now, as I told you a few moments ago, I shall
22 discuss the specific elements of each of these four federal
23 crimes. But, broadly speaking, the four federal crimes
24 charged are, first, the bank robbery itself; second, the
25 use of firearms during the course of that bank robbery,

1 that is, guns; third, the knowing transportation across
2 state lines, from Massachusetts to New York, of an auto-
3 mobile which the government claims was one of the getaway
4 cars used in the robbery and which the government claims
5 was known by this defendant to have been stolen; and
6 fourth, the crime of conspiracy to commit the first three
7 crimes mentioned.
8

9 And I will explain to you in a few moments that
10 conspiracy to commit a federal crime is a separate and
11 distinct crime from the substantive charge or charges which
12 may result from that conspiracy.

13 In discussing the charges in the indictment,
14 therefore, I think it will be clearer if, instead of follow-
15 ing the order in the indictment, I begin in the order which
16 I have just indicated. That is, I shall begin first with
17 the bank robbery charge, which is set forth in Count Three
18 of this indictment.

19 In Count Three of the indictment the defendant
20 James Flynn is charged with having violated the federal
21 bank robbery statute. Now, the federal bank robbery
22 statute is found in the federal criminal code, Title 18,
23 United States Code Section 2113(a). That statute provides
24 in pertinent part as follows:

25 "Whoever, by force and violence, or by

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

jgjb

1036

intimidation, takes or attempts to take from the person or
presence of another any property or money or any other
thing of value belonging to or in the care, custody, con-
trol, management or possession of any bank, is guilty of
a crime."

(Continued on next page.)

Count 3 of the indictment reads as follows:

"On or about the 20th day of October 1971 in the Southern District of New York, James Patrick Flynn and Richard Thomson Ford, who is also known as Vincent A. Thomas and John A. August, the defendants, unlawfully, wilfully and knowingly, by force and violence and by intimidation, did take from the person and presence of another money in the approximate amount of \$203,938, belonging to and in the care, custody, control, management and possession of the Orange County Trust Company, Route 211, Middletown, New York, a bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation."

In order to find this defendant guilty of this charge, you must find that the Government has established beyond a reasonable doubt each of the five following elements of that crime.

First, that on or about the 20th day of October 1971, the Orange County Trust Company, Route 211, Middletown, New York, was a bank, the deposits of which were insured at that time by the Federal Deposit Insurance Corporation.

Second, that on or about the 20th day of October 1971 the defendant took money from the bank, which belonged to or was in the care, custody, control,

1 gab-2

2 management or possession of that bank.

3 Third, that the money was taken from the person
4 or presence of one or more persons other than the defendant.

5 Fourth, that the defendant accomplished this
6 taking by force and violence or by intimidation.

7 Fifth, that the defendant did so unlawfully,
8 knowingly and wilfully.

9 Now, with respect to the first three elements
10 of the crime, as I have just enumerated them for you, they
11 seem simple enough and we do not have to add much by way
12 of further explanation.

13 With respect to the first element, however,
14 you may recall that the parties stipulated that the Orange
15 County Trust Company's deposits were at the time insured
16 by the Federal Deposit Insurance Corporation.

17 This, as I explained to you, is an element of
18 the crime which the Government must prove beyond a reasonable
19 doubt, and they have offered to prove it by way of this
20 stipulation.

21 The fourth element needs some explanation.
22 You will recall the fourth element is that the taking of
23 the money must have been accomplished by an act of violence
24 or by intimidation.

25 Now, with respect to that fourth element, the

Government is not required to show that force and violence were actually used against anyone; if it proves beyond a reasonable doubt that the taking was a result of intimidation, that is, a result of placing another person or persons in fear. Intimidation may be established by proof of circumstances that are normally and reasonably calculated to arouse fear in the ordinary run of human beings.

So if it happened that some extraordinarily timid person was put in fear by some sort of words or actions which would not normally frighten a person, this would not be the kind of intimidation with which the statute is concerned.

On the other hand, if the proof shows conduct by a defendant which would normally be expected to generate fear, then it is not necessary that those affected would actually have experienced some terror or panic or hysteria.

The question, in short, in this respect is an objective one. It is whether the Government has sustained its burden of showing conduct of the accused which was of such a nature as to be a sensible and reasonable basis for the generation of fear.

Now, the fifth and final element is that the defendant acted unlawfully, wilfully and knowingly.

You heard me read those words in reading this

1 charge from the indictment, and in order to convict a
2 defendant on this count or any other count, and there are
3 three other counts, as you know, you must find beyond a
4 reasonable doubt that the defendant acted with respect to
5 each count unlawfully, knowingly and wilfully.
6

7 Unlawfully obviously means contrary to law. An
8 act is done knowingly if it is done voluntarily and purpose-
9 fully and not because of mistake, accident, mere negligence
10 or other innocent reason. An act is done wilfully
11 if it is done knowingly, deliberately, intentionally and with
12 an evil motive or purpose.

13 In determining whether a defendant has acted
14 wilfully, it is not necessary for the Government to
15 establish that the defendant knew that he was breaking any
16 particular law. It must, however, prove a bad purpose or
17 motive on the part of a defendant.

18 Knowledge and wilfulness and intent of a
19 defendant need not be proved, as I told you before, or as
20 I will explain later, by direct evidence. Like any
21 other fact in issue, it may be established by circumstantial
22 evidence.

23 With respect to Count 3. If you find that
24 the Government has failed to establish any one of the five
25 elements which I have just enumerated and discussed for you

1 gab-5

2 beyond a reasonable doubt, then you must find the defendant
3 not guilty of that particular bank robbery charge.

4 On the other hand, if you should find that the
5 Government has sustained its burden of proof as to
6 each of these five elements, then you may convict the defend-
7 ant of the bank robbery charge.

8 The charge I am going to consider next is
9 Count 4 of the indictment. That is the firearms count.

10 With respect to this, the defendant is charged
11 with violating Title 18 United States Code, Section
12 924(c)(1), and that statute provides in pertinent part as
13 follows:

14 "Whoever uses a firearm to commit any felony for
15 which he may be prosecuted in a Court of the United States"
16 shall be guilty of a crime.

17 And the fourth count of the indictment reads
18 as follows:

19 "On or about the 20th day of October 1971 in the
20 Southern District of New York, James Patrick Flynn and
21 Richard Thomson Ford, who is also known as Vincent A. Thomas
22 and John A. August, the defendants, unlawfully, wilfully and
23 knowingly did use firearms, to wit, a shotgun and two
24 hand guns to commit a felony for which they may be prosecuted
25 in a Court of the United States, namely, the felony set

1 gab-6

2 forth in Count 3 of this indictment."

3 In order to find Mr. Flynn guilty of Count 4,
4 you must find beyond a reasonable doubt that the Government
5 has proved each of these three following elements:

6 First, on or about the 20th day of October
7 1971 in the Southern District of New York, which I instruct
8 you as a matter of law includes Middletown, New York, the
9 defendant committed the felony charged in Count 3 of the
10 indictment, that is the bank robbery. In other words, in
11 order to find this defendant guilty on the firearms count,
12 you must as a first step find that he is guilty of the
13 bank robbery charge.

14 Second, that the defendant used a firearm to aid
15 in the commission of the bank robbery and, third, that he
16 did so unlawfully, wilfully and knowingly, as I just
17 instructed you.

18 In other words, in order to find Mr. Flynn guilty
19 on Count 4, you must find, as I have said, that he committed
20 the crime charged in Count 3, the bank robbery and, in
21 addition, you must find beyond a reasonable doubt that he
22 did unlawfully, wilfully and knowingly use a firearm.

23 The term "firearm" as set forth in the indictment
24 and the statute includes hand guns and shotguns. They cannot
25 simply be toys.

1
2 To justify a finding that a defendant used a
3 firearm during the commission of a bank robbery, it is
4 not necessary to find that a defendant actually shot a
5 customer or an employee of the bank. Indeed, the Government
6 did not so contend. Rather, to satisfy this element of
7 the offense it is sufficient if you are convinced beyond
8 a reasonable doubt that the defendant or others who you
9 find participated with him carried one or more firearms
10 which were worn, displayed and loaded during the commission
11 of the robbery.

12 It is not essential to such a finding that
13 there be direct evidence that shows that this firearm was,
14 in fact, loaded.

15 If a person is engaged in a robbery and dis-
16 plays or points a gun to insure his demand and intends to
17 produce a fear in a person or persons, the jury is permitted
18 to infer, if it wishes from such facts, that the gun was,
19 in fact, loaded.

20 Now, if you find that the Government has failed
21 to establish beyond a reasonable doubt any one of the three
22 elements of the firearms charge, as I have just enumerated
23 and discussed them for you, then you must find the defendant
24 not guilty of that charge.

25 On the other hand, if you should find that the

1 Government has sustained its burden of proving each and every
2 one of these three elements of the firearms charge, then
3 you may convict the defendant on that count.
4

5 As I have just described, in Counts 3 and 4,
6 the bank robbery charge and the firearms charge, the defend-
7 ant has been charged with violating Title 18 United States
8 Code, Sections 2113A, Bank Robbery Statute, and 924(c)(1),
9 the Firearms Statute to commit a felony.

10 However, in connection with both of these
11 charges in the indictment, the defendant is also charged
12 with violating another Federal statute, the aiding and
13 abetting statute, and that is found in Title 18 United States
14 Code, Section 3.

15 That statute provides in part as follows:

16 "Whoever commits an offense against the United
17 States or aids, abets, counsels, commands, induces or
18 procures its commission, is punishable as a principal."

19 And another part provides:

20 "Whoever wilfully causes an act to be done, which,
21 if directly performed by him or another, would be an offense
22 against the United States, is punishable as a principal."

23 Accordingly, you may find this defendant guilty
24 of the bank robbery charge or the firearms charge or both,
25 if you find beyond a reasonable doubt that another person

1 gab-9

2 actually committed the offense and that the defendant aided
3 and abetted him or the defendant caused the crime to be
4 committed by another.

5 There is no precise rule as to what acts a
6 defendant must perform in order to constitute that defendant
7 an aider or abettor. However, it is enough if you find
8 that a defendant knowingly associated himself in some
9 manner with the illegal venture, actually participated in
10 it as something he wished to bring about or he sought by
11 his actions to make succeed.

12 In this connection you may also consider whether
13 the defendant had a stake in the venture. In other
14 words, the law is that one who aids and abets another or
15 causes another to commit an offense with knowledge of the
16 unlawful nature of the offense is just as guilty of that
17 offense as if he committed the offense himself.

18 To find a defendant guilty of aiding and abetting
19 you must, of course, find something more than mere knowledge
20 on his part that a crime has been committed or is being
21 committed. Thus, a mere spectator at a crime is not a
22 participant or an aider or an abettor.

23 Consequently, in order to find a defendant
24 guilty as an aider or abettor, you must find that the defend-
25 ant with knowledge of the unlawful purpose in some way

1 gab-10

2 associated himself with the illegal activity, that he
3 knowingly participated in it as something he wished to
4 bring about, that he knowingly by his actions endeavored
5 to make it succeed.

6 Now we shall turn to Count 2 of the indictment.
7 In that count the defendant is charged with having violated
8 Title 18 United States Code, Section 2312, which provides
9 in pertinent part as follows:

10 "Whoever transports in interstate commerce
11 a motor vehicle knowing the same to have been stolen" is
12 guilty of a crime.

13 Count 2 of the indictment reads as follows:

14 "On or about the 18th day of October 1971 in the
15 Southern District of New York and elsewhere, James Patrick
16 Flynn and Richard Thomson Ford, also known as Vincent A.
17 Thomas and John A. August, the defendants, unlawfully,
18 wilfully and knowingly did transport in interstate commerce
19 from Boston, Massachusetts to Middletown, New York a
20 motor vehicle, to wit, a blue 1971 Plymouth Fury III bearing
21 Massachusetts registration 43965F knowing this motor vehicle
22 to have been stolen."

23 In order to find the defendant guilty of
24 Count 2, you must find beyond a reasonable doubt that the
25 Government has established each of the following three

1 gab-11

2 elements:

3 First, that a blue 1971 Plymouth Fury III bearing
4 Massachusetts registration 43965F had been stolen, not
5 necessarily by this defendant or any other named defendant.

6 Second, that on or about October 18, 1971, the
7 defendant unlawfully, wilfully and knowingly transported
8 this motor vehicle in interstate commerce, that is, from
9 Massachusetts to New York and,

10 Third, that this defendant knew this motor
11 vehicle to have been stolen.

12 I instruct you that as a matter of law the
13 word "stolen" as used in this indictment and in the statute
14 includes all felonious takings of an automobile with intent
15 to deprive the owner of the rights and benefits of ownership.

16 Moreover, the word "stolen" is not restricted
17 to an intent to permanently deprive the owner of his
18 vehicle. If the original taking is done with intent to
19 deprive the owner only temporarily of his rights and benefits
20 of ownership, it would still constitute a stealing.

21 Let me also explain what the Government does not
22 have to prove in connection with this count.

23 It is not necessary that you, the jurors, know
24 or are able to determine who it may have been who actually
25 stole the blue Plymouth Fury from Logan Airport in Boston.

1
2 Indeed, the Government does not claim to have proved who
3 specifically stole the car. In other words, while the
4 Government must prove and you must find beyond a reasonable
5 doubt that the car was stolen and that this defendant, Mr.
6 Flynn, knew it was stolen, the Government does not have
7 to prove and you do not have to find proof of who actually
8 stole it or that Mr. Flynn knew who stole it. What you
9 must find, as I have said, is that Mr. Flynn knew it had
10 been stolen and, of course, you must find the other two
11 elements to which I have just referred.
12
13
14

(continued on next page.)

15
16
17
18
19
20
21
22
23
24
25
End 3 PM

jg 1

Now, the law is that possession of property which has recently been stolen, if not satisfactorily explained, is a circumstance from which the jury may reasonably draw the inference that the person in possession of that recently stolen property knew that the property had been stolen.

Indeed, possession of property recently stolen, not satisfactorily explained, is also a circumstance from which the jury may reasonably draw the inference and find, in light of all the surrounding circumstances, that the person in possession participated in some way in the theft of the property, although the theft itself is not the crime you are concerned with here.

The term "recently," of course, is a relative term which has no fixed meaning. Whether the property may be considered as recently stolen depends upon the nature of the property and all the facts and circumstances shown by the evidence. The longer the period of time since the theft, the weaker the inference which may be drawn from unexplained possession.

Here, for example, the Government claims that the evidence establishes that the blue Plymouth was stolen from Logal Airport sometime on October 18, 1971, was in the possession of this defendant or one of his accomplices

on the evening of October 18, 1971 at the Holiday Inn in Middletown, and was used by the bank robbers during the course of the escape from the area on October 20, 1971.

If you find from the evidence beyond a reasonable doubt that the blue Plymouth Fury described in the indictment was stolen and that while recently stolen the motor vehicle was in this defendant's possession, you would be justified in drawing from those facts the inference that this defendant had knowledge that the car had been stolen, unless possession of this recently stolen property by the defendant is explained to your satisfaction by other facts and circumstances in evidence.

In considering whether possession of recently stolen property has been satisfactorily explained, the jury will bear in mind that in the exercise of Constitutional rights the defendant need not take the witness stand and testify. Possession, however, may be satisfactorily explained through other circumstances or other evidence already in the case independent of any testimony of the accused.

Now, it is within the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence warrant the inference which the law permits the jury to draw from possession of recently stolen

jg 3

property.

Now, as I indicated previously, an essential element of this charge is that the motor vehicle have been transported by the defendant in interstate commerce. The Government does not contend, however, that this defendant himself personally transported the stolen automobile from Massachusetts to New York. Indeed, it relies on two separate legal theories which I shall explain to you.

One of these theories I've already discussed. I've previously instructed you as to the federal statute which makes a person who aids, abets, counsels, commands, induces or procures the commission of a crime equally as responsible as the person who directly performed the act constituting the crime.

Thus, for example, if you find that someone other than Mr. Flynn actually transported the stolen blue Plymouth Fury into New York, and if you also find beyond a reasonable doubt that Mr. Flynn was an aider and abetter of this act within the meaning of the aiding and abetting statute as I've just explained it to you, you may find him guilty of this second count.

Now, the second theory on which the Government relies is one which is related to the conspiracy charge, about which I will tell you in a few moments,

and which is charged in Count One of this indictment.

The Government contends that in furtherance of the overall conspiracy to rob the bank the conspirators transported the stolen blue Plymouth in interstate commerce so that the car would be available to assist in the getaway.

I instruct you as a matter of law that each member of a conspiracy, if you find that there was one and that the defendant was a member, as I shall define that term for you later, is responsible for the act of every other member of the conspiracy which was done in furtherance of the objectives of the conspiracy and during the continuance of the conspiracy.

Hence, you may find the defendant guilty of the automobile count under this theory, if you find beyond a reasonable doubt that a conspiracy to rob the bank existed and that the defendant was a member of that conspiracy and, further, that the stolen Plymouth Fury was transported in interstate commerce by any other co-conspirator in furtherance of the overall conspiracy.

Now, if you find that the Government has failed to establish any one of the three elements of the second count, that is, the stolen car charge, as I have just

1 jg 5

2 enumerated and discussed them for you, then you must find
3 this defendant not guilty of that charge. On the other
4 hand, if you should find that the Government has sustained
5 its burden of proving each and every one of these three
6 elements of the stolen car charge as to this defendant
7 beyond a reasonable doubt, then you may convict the
8 defendant of that particular charge.

9 Now, at this time we are going to take a ten
10 minute recess. The jury is excused for ten minutes.

11 (Recess)

12 THE COURT: As I indicated, we will now turn
13 our attention to Count One of the indictment, which charges
14 a violation of the federal conspiracy statute, and that
15 statute is found in Title 18, United States Code, Section
16 371, and that statute provides, in pertinent part, as
17 follows:

18 " If two or more persons conspire either to
19 commit any offense against the United States or to defraud
20 the United States or any agency thereof in any manner or
21 for any purpose, and one or more such persons do any act
22 to effect the object to the conspiracy, each is guilty of
23 a crime."

24 That is the statute which the defendant is
25 charged with violating in Count One. And Count One of the

1 jg 6

2 indictment reads as follows:

3 "In or about October 1971, in the Southern
4 District of New York and elsewhere, James Patrick Flynn
5 and Richard Thomson Ford, who is also known as Vincent A.
6 Thomas and John A. August, the defendants, unlawfully, wil-
7 fully and knowingly did conspire and agree with each other
8 and with other persons to commit offenses against the
9 United States, to wit to violate Title 18, United States
10 Code, Sections 2312, 2113(a) and 924(c)(1).

11 It was part of said conspiracy that James
12 Patrick Flynn and Richard Thomson Ford, the defendants,
13 would unlawfully, wilfully and knowingly transport in
14 interstate commerce from Boston, Massachusetts to Middletown,
15 New York a motor vehicle, to wit a blue 1971 Plymouth Fury
16 III bearing Massachusetts registration 43965F, knowing
17 this motor vehicle to have been stolen.

18 It was further part of this conspiracy that
19 James Patrick Flynn and Richard Thomson Ford, the defendants,
20 unlawfully, wilfully and knowingly, by force and violence
21 and by intimidation, would take from the person and presence
22 of another money in the approximate amount of \$203,938
23 belonging to and in the care, custody, control, management
24 and possession of the Orange County Trust Company, Route
25 211, Middletown, New York, a bank the deposits of which

1
2 were then insured by the Federal Deposit Insurance Corpora-
3 tion.

4 It was further part of this conspiracy that James
5 Patrick Flynn and Richard Thomson Ford, the defendants,
6 unlawfully, wilfully and knowingly would use firearms, to
7 wit a shotgun and two handguns, to commit a felony, for
8 which they may be prosecuted in a court of the United
9 States, namely the felony set forth in Count Three of this
10 indictment.

11 Overt Acts.

12 In furtherance of this conspiracy and to
13 effect its objects, the following overt acts, among others,
14 were committed by the defendant in the Southern District
15 of New York:

16 1. On or about October 17, 1971, the defendant
17 Richard Thomson Ford resided at Sugar's Bungalows, Jersey
18 Avenue, Greenwood Lake, New York under the assumed name of
19 Vincent A. Thomas.

20 2. On or about October 18, 1971, the defendant
21 James Patrick Flynn resided in Room 123 of the Holiday Inn,
22 Middletown, New York, a room then registered under the
23 fictitious name of Robert P. Barry of Lynn, Massachusetts.

24 3. On or about October 20, 1971, James
25 Patrick Flynn and Richard Thomson Ford, the defendants,

1 jg 8

2 entered the Orange County Trust Company, Route 211, Middle-
3 town, New York, wearing masks and gloves and carrying
4 firearms.

5 4.. On or about October 20, 1971, James
6 Patrick Flynn and Richard Thomson Ford exited from a beige
7 1972 Plymouth Fury III with a tan vinyl top and entered a
8 blue 1971 Plymouth Fury III in the Middletown Senior High
9 School parking lot.

10 And that is the end of Count One of the
11 indictment.

12 Now the question is: What is a conspiracy?
13 A conspiracy is a collective criminal agreement or a
14 partnership in crime. A conspiracy presents a greater
15 potential threat to Government and society than acts
16 committed by a lone wrongdoer. Concerted action for
17 criminal purposes often, if not normally, makes possible
18 the attainment of ends more complex than those which an
19 individual acting alone could accomplish.

20
21
22
23 (Continued on next page)

Moreover, group association increases the likelihood that the criminal objective will be successfully realized and renders detection more difficult than in the instance of the lone wrongdoer.

Now, it is for these reasons that the Congress has made conspiracy to violate a Federal statute a separate and distinct crime.

In order to convict this defendant of Count 1, you must find that the Government has established to your satisfaction beyond a reasonable doubt each of the following essential elements of the crime of conspiracy:

First, the existence of the conspiracy as alleged in the indictment.

Second, that it was a purpose of the conspiracy as alleged in the indictment to violate the Bank Robbery Statute, the Firearms Statute, and the stolen car in Interstate Commerce Statute.

Third, that the defendant knowingly and wilfully became a participant in or a member of the conspiracy.

Fourth, that at least one of the co-conspirators knowingly committed at least one of the overt acts set forth in the indictment here in the Southern District of New York in furtherance of the conspiracy and during the period of the conspiracy as alleged in the indictment.

1 gab-2

2 Now I am going to discuss each one of these
3 four elements in greater detail.

4 The first element is the existence of the
5 conspiracy.

6 In order to establish or prove a conspiracy,
7 the Government is not required to show that two or more
8 persons sat around a table and entered into a solemn contract
9 orally or in writing stating that they have formed a con-
10 spiracy to violate the law, setting forth the details of
11 the plan, the means by which the unlawful project is to be
12 carried out or the part to be played by each co-conspirator.
13 Indeed, it would be extraordinary if there were any such
14 formal written agreement or specific oral statement to
15 that effect.

16 Your common sense will tell you that when men,
17 in fact, undertake to enter into a criminal conspiracy,
18 much is left to unexpressed understanding.

19 Conspirators do not usually reduce their
20 agreements to writing or acknowledge them before a notary
21 public, nor do they publicly broadcast their plan.

22 From its very nature, a conspiracy is almost
23 invariably secret in its origin and execution.

24 Therefore, it is sufficient if you find that
25 two or more persons in any manner, through any contrivance,

1 gab-3

2 impliedly or tacitly, come to a common understanding to
3 violate the law.

4 Express language or specific words are not
5 required to indicate assent or attachment to a conspiracy,
6 nor is it required to find that all the co-conspirators
7 alleged in the indictment join in the conspiracy in order
8 to find that a conspiracy existed. You need only find
9 that one alleged co-conspirator or the defendant and one
10 other person entered into an unlawful agreement in order
11 to find that a conspiracy existed.

12 In determining whether there has been an
13 unlawful conspiracy, you may judge acts and conduct of the
14 alleged co-conspirators which are done to carry out an
15 apparent criminal purpose. The old adage, "Actions
16 speak louder than words" is applicable here.

17 Usually the only evidence available of a con-
18 spiracy is that of disconnected acts which, however, when
19 taken together in connection with other acts show a con-
20 spiracy to secure a particular result as satisfactorily and
21 conclusively as more direct proof.

22 Proof concerning the accomplishment of the
23 objective of a conspiracy may be the most persuasive evidence
24 of the existence of the conspiracy itself.

25 In other words, success of the venture, if you

1 gab-4

2 believe the criminal venture was successful, may be the
3 best proof that there existed agreement to violate the law.

4 In this connection it is not necessary for the
5 Government to prove the success of the venture in order
6 to establish a violation of the Conspiracy Statute.

7 A conspiracy is basically an agreement to violate
8 the law. It may exist even though the final objective is
9 never realized or accomplished.

10 In determining whether the conspiracy
11 charged in this indictment actually existed, you may con-
12 sider the evidence, the acts and conduct of the alleged
13 co-conspirators as a whole and the reasonable inferences
14 to be drawn from such evidence.

15 If upon consideration of the evidence you find
16 beyond a reasonable doubt that the minds of at least two of
17 the alleged co-conspirators met in an understanding way and
18 that they agreed, as I explained the conspiratorial agree-
19 ment to you, to work together in furtherance of the alleged
20 scheme alleged in the indictment, then proof of the
21 existence of the conspiracy, but only of its existence,
22 is complete.

23 While the indictment charges the conspiracy
24 began in or about October 1971, it is not essential for
25 the Government to prove the conspiracy started and ended on

1 gab-5

2 or about that particular date, that is October '71. It is
3 sufficient if you find that, in fact, a conspiracy was
4 formed and existed for some substantial period of time
5 in that period, that is in or about October 1971, and if
6 you also find that at least one of the overt acts alleged
7 in the indictment was committed in furtherance of the con-
8 spiracy during that period. And as to an overt act which
9 you find did occur, you need not find that it occurred on
10 a specific date set forth in the indictment, you need only
11 find that it occurred no earlier than on or about October
12 1971 and no later than October 1971.

13 Now we come to the second element of the crime
14 of conspiracy. The indictment charges that the conspiracy
15 had three objectives, that is, to violate the Federal
16 Bank Robbery Statute, the stolen car in Interstate Commerce
17 Statute and the use of firearms to commit a Felony Statute.

18 Now, with respect there to the second element,
19 the Government must prove to your satisfaction beyond a
20 reasonable doubt that it was the purpose of this conspiracy
21 to violate at least one of these three laws.

22 At the trial the Government has contended that
23 the real overall objective was to rob a bank.

24 If you find beyond a reasonable doubt from
25 all the evidence that the conspirators agreed upon this,

1 gab-6

2 one criminal objective, that is to rob a bank, that would
3 be sufficient to satisfy the second element.

4 Now we come to the third element of the crime
5 of conspiracy. This third element which you must find
6 is that the defendant knowingly and wilfully became a
7 member of the conspiracy.

8 Therefore, if you conclude that a conspiracy
9 is charged and this indictment did exist and its purpose was
10 to violate the Federal statutes which I have just mentioned,
11 the Bank Robbery Statute, the Stolen Car Statute or the
12 Firearms Statute, you must next determine whether the defend-
13 ant on trial was a member of that conspiracy, that is,
14 whether he participated in the conspiracy with knowledge
15 of its unlawful purpose and in furtherance of its unlawful
16 objectives.

17 A defendant's participation in the conspiracy,
18 like its existence, can be inferred from such facts and
19 circumstances in evidence as would logically sustain that
20 inference.

21 I want to caution you, however, that mere associa-
22 tion of a defendant with an alleged conspirator or con-
23 spirators does not establish his participation in a conspir-
24 acy, if you find that one did exist.

25 So, too, mere knowledge by a defendant of

1 gab-7

2 the existence of a conspiracy or any illegal act on the part
3 of an alleged co-conspirator is not sufficient to establish
4 a defendant's membership in the conspiracy.

5 You must find, as I have said, actual knowing
6 participation by this defendant in the agreement to violate
7 the law.

8 Now, again an act is done knowingly if it is
9 done voluntarily and purposefully and not because of mistake,
10 accident, mere negligence or other innocent reason.

11 An act is done wilfully if it is done knowingly,
12 deliberately and with an evil motive or purpose.

13 In determining whether a defendant has acted
14 wilfully, as I said before, it is not necessary for the
15 Government to establish the defendant knew that he was
16 breaking any particular law. It must, however, prove that
17 the defendant had an evil motive or purpose in mind.

18 Now, the law is that even if one conspirator
19 joined the conspiracy after it was formed and was engaged
20 in it to a degree more limited than that of other co-
21 conspirators, the defendant is equally culpable so long as
22 he was a co-conspirator.

23 In other words, it is not required that a
24 person be a member of the conspiracy from its very start.
25 He may join it at any point during its progress and be

1 gab-8

2 held responsible for all that has been said or done in
3 furtherance of the conspiracy before he joined, and it may be
4 done or said thereafter, during the existence of the
5 conspiracy and in furtherance of the conspiracy and while
6 he remains a member.

7 Simply stated and using the partnership analogy,
8 by becoming a partner, one who joins a conspiracy assumes
9 all the liabilities of the partnership, including those
10 which occurred before he became a member.

11 It is not required that the Government prove
12 that a conspirator knew all other members of the conspiracy.
13 The conspiracy once formed is presumed to have continued
14 until its objective is accomplished or there is some
15 affirmative act of termination by its members.

16 Once you are satisfied beyond a reasonable
17 doubt that a conspiracy existed and the defendant on trial
18 was a member of it, any acts or declarations by any person
19 whom you find were also members of the conspiracy made
20 during its pendency and in furtherance of its objectives
21 are considered the acts and declarations of all other
22 members of the conspiracy, even though the particular
23 defendant was not present at the time the act was committed
24 or the statement made, as long as such act was done in
25 furtherance of the conspiracy.

1 gab-9
2 In other words, every co-conspirator is fully
3 responsible for what every other conspirator does in
4 furtherance of the conspiracy, whether he knows about it
5 or not and whether he specifically approves of it
6 or not.

7 Now we come to the fourth and final element of
8 the crime of conspiracy. The offense of conspiracy is
9 complete only when the unlawful agreement is made and any
10 single overt act to effect the object of the conspiracy
11 is thereafter committed by at least one of the co-conspirators.

12 An overt act is any step, action or conduct
13 which is taken to achieve, accomplish or further the object-
14 ive of the conspiracy.

15 The purpose of requiring proof of an overt
16 act is that while the parties might conspire and agree to
17 do an unlawful thing, they may change their minds or even
18 abandon the project and do nothing to carry it into effect,
19 in which case it would not be a crime.

20 The prosecution is not required to set forth
21 in the indictment each and every act on which it relies to
22 establish the conspiracy or a defendant's participation
23 therein, nor is it required to prove each overt act which
24 may have occurred during and in furtherance of the conspiracy,
25 but it is required to prove that at least one overt act did

1 gab-10

2 take place here in the Southern District of New York.

3 The overt act need not be criminal in itself.
4 It may, for instance, as alleged in this case, consist of
5 a mere residence in the Southern District of New York
6 for the purpose of conspiracy or in connection with its
7 objectives, mere meetings between alleged co-conspirators.

8 The overt act, however, as I said, must be
9 an act which follows and tends toward the accomplishment of
10 a plan or scheme charged in the conspiracy count and must
11 be knowingly done in furtherance of some objective of the
12 conspiracy.

13 If you find that the Government has failed to
14 establish beyond a reasonable doubt any one of the four
15 elements of the crime of conspiracy, as I have just
16 enumerated and discussed them for you, then you must find
17 the defendant not guilty of that charge.

18 On the other hand, if you should find that the
19 Government has sustained its burden of proof with respect
20 to each one of these elements of the crime of conspiracy,
21 then you may find the defendant guilty on that count.

22 Now I should like to discuss the types of evi-
23 dence which you have heard during the past few days of this
24 trial. There are two classes of evidence recognized and
25 received in Courts of Justice, upon either of which you

1 gab-11

2 may find an accused guilty of a crime. One is called
3 direct evidence, the other is called circumstantial evi-
4 dence.

5 Direct evidence is evidence which tends to
6 show the fact in dispute without need for any other amplifica-
7 tion, although, of course, there is always the question
8 whether that particular evidence is to be believed.

9 For example, there were a number of witnesses
10 called by the Government who were present during the
11 alleged commission of the bank robbery and testified as
12 to what they actually saw or heard at the time.

13 It is, of course, up to you to believe or dis-
14 believe the testimony of these witnesses, but this is an
15 example of what I mean by direct evidence.

16 Circumstantial evidence, on the other hand, is
17 proof of other facts from which the fact in dispute may
18 reasonably be inferred. It is that evidence which tends
19 to prove the fact in dispute by proof of other facts which
20 have a legitimate tendency to lead the mind to infer that
21 the facts sought to be established are true.

22 Circumstantial evidence consists, therefore,
23 of facts proved from which the jury may infer by a process
24 of reasoning other facts in dispute.

25 It is not necessary, therefore, that the

1 gab-12

2 participation of a defendant in a crime be shown by direct
3 evidence. A defendant's connection to a crime charged may
4 be inferred by the jury from such facts and circumstances
5 in evidence as would legitimately tend to support an infer-
6 ence on the part of the jury that the defendant on trial
7 participated in the crime charged.

8 In this case the Government contends that the
9 guilt of this defendant has been established by the proof
10 which it offered here beyond a reasonable doubt.

11 To a large extent, the Government relies upon
12 circumstantial evidence.

13 In this regard the Government in its closing
14 argument, which you heard before the luncheon recess,
15 has pointed to the facts from which the Government claims
16 you can infer the guilt of this defendant as to each crime
17 charged.

18 The defendant's counsel, on the other hand, in
19 his summation has pointed to this circumstantial evidence
20 and has argued that it is consistent with innocence.
21 But whether the Government's evidence consists of direct
22 evidence or circumstantial evidence or both, the Government's
23 evidence must be such that you are convinced of the
24 defendant's guilt beyond a reasonable doubt, and you must
25 remember that the defendant has no burden of proof at all

1 gab-13

2 and certainly does not have to prove his innocence.

3 Knowledge and wilfulness and intent of a defend-
4 ant need not be proved by direct evidence. Like any other
5 fact in issue, it may be established by circumstantial
6 evidence.

7 In this case, for example, whether the defendant
8 knew that the car had been stolen in Massachusetts and
9 whether the defendant knew that the car thus stolen had been
10 taken across State lines need not be proved by direct evi-
11 dence. Like any other fact in issue, it may be proved by
12 circumstantial evidence.

13 In every criminal case it is necessary for the
14 Government to prove beyond a reasonable doubt that a defendant
15 on trial had the necessary criminal knowledge, wilfulness
16 and intent.

17 Questions concerning a defendant's knowledge
18 involve proof of a defendant's state of mind at the time.

19 It is obviously impossible to prove directly the
20 operation of a person's mind and see what he knew or did
21 not know because you cannot look into a person's mind
22 and see what his or her intentions are or were, but the
23 proof of the circumstances surrounding a defendant's
24 activities may well supply an adequate and convincing basis
25 for finding that a defendant had certain knowledge, and for
finding whether he acted wilfully and intentionally.

End take 5

1
2 In other words, the actions of a defendant must
3 be judged in their time and place, just as the full mean-
4 ing of a word is commonly understood only in its relation
5 to other words in a sentence or in its context. So the
6 meaning of a particular act or conduct may depend upon the
7 circumstances surrounding that act or conduct.

8 In determining the issue of knowledge, wil-
9 fullness and intent, you are entitled to consider any
10 statements made by the defendant which are in evidence and
11 any action done by the accused which are in evidence and
12 all other facts and circumstances in evidence which may
13 aid you in determining the defendant's state of mind.

14 Now, the law is that the flight or concealment
15 of a person immediately after the commission of a crime
16 or after he is accused of a crime which has been committed
17 is not sufficient in itself to establish guilt, but it is
18 a fact which, if proved beyond a reasonable doubt, may be
19 considered by the jury in the light of all other proven
20 facts in determining the question of guilt or innocence.

21 Whether or not evidence of flight or conceal-
22 ment shows a consciousness of guilt and the significance,
23 if any, to be attached to such circumstance are matters
24 exclusively in the province of the jury.

25 If you find beyond a reasonable doubt that the

1
2 defendant used a name other than his own in order to avoid
3 subsequent identification, that fact would be one from which
4 you may, but need not, infer a consciousness of guilt on
5 his part.

6 You have heard testimony from a Massachusetts
7 State Trooper Costa that when the car was stopped on Febru-
8 ary 14, 1977 the defendant told Trooper Costa that he had
9 no identification. You have heard testimony from Special
10 Agent Pieroni that later, on February 14, 1971, the defen-
11 dant told the United States Magistrate in the Federal
12 Court House in Boston that he never received notice that
13 he had been indicted. You have heard testimony from
14 Assistant United States Attorney Thomas Engel that on
15 February 25, 1977 the defendant in response to questions
16 by a judge in this court house made statements about
17 whether or not the defendant had a job, the type of job,
18 where he was working, how long he had the job, and whether
19 or not he worked under his own name.

20 Now, those questions and the answers were also
21 read to you from Government's Exhibit 206, which Mr. Engel
22 testified was the transcript of that proceeding. You have
23 also heard testimony from Special FBI Agents Charles Riley
24 and Francis Joyce that they served a subpoena on Mr. Flynn
25 on February 16, 1974 and that at that time they told Mr.

1 jgjb

2 Flynn that they wanted to ask him questions about his
3 presence in the Middletown area in October, 1971 and that
4 the defendant said something to the effect that he did not
5 know what they were talking about.

6 Now, if you find the defendant did make these
7 statements to law enforcement officers or prosecutors or
8 judges or magistrates or any of them, then in considering
9 the question of his guilt or innocence you may give the
10 statements such weight as you believe they deserve after
11 considering all the circumstances which were brought out
12 from the evidence.

13 Assistant United States Attorney Rakoff testi-
14 fied that on or about April 4, 1974 a letter was mailed
15 to Mr. Chisholm, that is, the defendant's lawyer, copies
16 of which Mr. Rakoff testified were also mailed to the
17 defendant Flynn at 115 Hibiscus, Weymouth, Massachusetts
18 and to the court.

19 He also testified about Government's Exhibit
20 48. The formal notice of arraignment.

21 I instruct you that where a letter is properly
22 addressed and mailed to a person you are entitled to infer,
23 in the absence of contrary evidence, that the addressee
24 received the letter and had notice of its contents.

25 Now, ladies and gentlemen, the most important

part of this case is the part which you now as jurors are about to play, because it is for you and you alone to decide whether this defendant on trial is guilty or not guilty of a particular charge set forth in this indictment. I know that you will try the issues that have been presented to you according to the oath which you have taken as jurors. In that oath you promised that you would well and truly try the issues joined in this case and a true verdict render.

I suggest to you that if you follow your oath and try the issues without combining your thinking with any emotions, you will arrive at a true and just verdict.

It must be clear to you that once you get into an emotional state and let fear or prejudice or bias or sympathy interfere with your thinking, then you will not arrive at a true and just verdict.

As you deliberate, ladies and gentlemen, please be careful to listen to the opinions of your fellow jurors as well as to ask for an opportunity to state your own views. No one juror holds the center stage in a jury room and no one juror controls or monopolizes the deliberations.

If after listening to your fellow jurors and after stating your own view you become convinced that your view is wrong, do not hesitate because of stubbornness

1
2 or pride of opinion to change your view. On the other hand,
3 do not surrender your honest conviction solely because of
4 the opinion of your fellow jurors or because you are out-
5 numbered.

6 Under your oath as jurors you are not to be
7 swayed by sympathy. You are to be guided solely by the
8 evidence in the case. The hard-core question which you
9 must ask yourselves as you sift through this evidence is
10 where do you find the truth. This is a question of truth.
11 This is what a trial is all about. It is not a battle of
12 wits, it is not a contest of salesmanship, and it is not
13 a contest in personalities. The only triumph in any case,
14 whether it be a civil case or a criminal case, is whether
15 the truth has triumphed. If it has, then justice has been
16 done. If it has not, then justice has not been done.

17 You are to determine the guilt or innocence of
18 this defendant, as I said, again, solely on the basis of the
19 evidence and the law which I have just instructed you upon.

20 During your deliberations you are not to specu-
21 late in any way about the punishment which a defendant may
22 receive if he is found guilty. The function of a jury in
23 a criminal case is to determine the guilt or innocence of
24 a defendant as to a particular charge, based upon the evi-
25 dence and the court's instructions as to the law. It is

1 jgjb

2 then the duty of the court, for the judge alone has
3 the duty, to determine the sentence if there is a conviction.
4 So you should not discuss possible sentence during your
5 deliberations.

6 Again, you must return a verdict as to each
7 count separately. There are four counts in the indictment.
8 The form of your verdict is either guilty or not guilty.
9 You may return a verdict of guilty as to each count, you
10 may return a verdict of not guilty as to each count. You
11 may return a verdict of guilty as to some counts and a ver-
12 dict of not guilty as to others.

13 If you are not able to agree on a verdict as to
14 several counts, you may not compromise by finding a defen-
15 dant guilty as to certain counts and not guilty as to
16 others. In other words, your verdict as to each count must
17 be the unanimous verdict of the jury.

18 I want to remind you, as I pointed out earlier,
19 that in order for you to find the defendant guilty of the
20 firearm charge you must first find him guilty of the bank
21 robbery charge.

22 Again, your verdict as to each count must be
23 unanimous and must reflect the conscientious conviction of
24 each and every one of you as to each count.

25 Now, at thistime will counsel join me in the

robing room for a few moments.

(In the robing room.)

THE COURT: Mr. Buchwald, do you have any exceptions?

MR. BUCHWALD: No exceptions, your Honor.

THE COURT: Do you have any, Mr. Chisholm?

MR. CHISHOLM: No, your Honor.

THE COURT: All right.

We can go back in.

(In open court.)

THE COURT: At this time we'll dismiss the two alternate jurors. On behalf of the citizens of the Southern District of New York, this court thanks both of you for your service on this jury. I'm sorry that you will not get an opportunity to deliberate with your fellow jurors after having sat through this trial. But I'm afraid that is often the fate of alternate jurors.

I am sure you realize that your service was essential in the event that one of the regular jurors became incapacitated.

So you are excused now with the thanks of the court.

(Two alternate jurors excused.)

THE COURT: At this time I'll ask the clerk to

JUROR NO. 4: Say the others?

THE COURT: Just a moment. Now you have not reached a verdict as to the other two counts?

THE FORELADY: We have reached a verdict on the other two counts, your Honor.

THE COURT: Then you may announce those.

THE FORELADY: Bank robbery; not guilty.

Firearms; not guilty.

THE COURT: You may be seated.

Anything further?

Let's have the clerk just poll the jury.

THE CLERK: Ladies and gentlemen of the jury, listen to your verdict as it stands records.

You say you find the defendant guilty --

THE COURT: See if all the jurors are here first for the verdict.

All right, proceed. Let the record show that all the jurors are present.

THE CLERK: Ladies and gentlemen of the jury, listen to the verdict as it stands recorded.

You say you find the defendant guilty on Count 1, guilty on Count 2; not guilty on Count 3; not guilty on Count 4.

Madam Forelady, is that your verdict?

(3:00 P.M., in open court; jury present.)

THE CLERK: Ladies and gentlemen of the

jury, please answer as your names are called.

(Roll call, all answered present.)

THE CLERK: Madam Forelady, have you agreed

upon a verdict?

THE FORELADY: Yes, we have.

THE CLERK: How do you find the defendant on

Count --

THE COURT: Just a moment. Have you reached

a verdict as to any of the counts?

THE FORELADY: Yes, your Honor.

THE COURT: Which count is that?

THE FORELADY: Two counts. We find the defendant--

THE COURT: Just a moment, which two counts?

JUROR NO. 3: We don't know the numbers. We

have decided on all of them, we just don't know the

numbers. We have them by name.

THE FORELADY: By name.

THE COURT: All right.

THE FORELADY: May I read them?

Conspiracy, guilty.

THE COURT: What is the other one?

THE FORELADY: Interstate transportation of

car, guilty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

hpd

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

Plaintiff, :

- against- : 74 Cr 336

JAMES PATRICK FLYNN, :

Defendant. :

-----x

BEFORE:

HON. CONSTANCE BAKER MOTLEY,

District Judge

November 29, 1977

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.
United States Attorney for the
Southern District of New York
By: DONALD BUCHWALD, ESQ.
Assistant United States Attorney

RONALD CHISHOLM, ESQ.
Attorney for the Defendant

1 hpdr 2

2 (Case called.)

3 MR. BUCHWALD: Your Honor, one housekeeping
4 matter. If I might hand up a list of the 3500 material
5 which was furnished to counsel. I didn't read the items
6 into the record at the trial and if it might just be made
7 a Court's exhibit, a list of the 3500 material. I forget
8 how far we got with Court exhibits, whether it was E,
9 or F. Perhaps we can mark it as Z or something, and
10 include it.

11 THE COURT: I don't know if that needs a
12 number but it will make ready reference to the 3500 material,
13 is that it?

14 MR. BUCHWALD: Yes, your Honor.

15 THE COURT: Mr. Chisolm, have you and your
16 client had an opportunity to read the presentence report?

17 MR. CHISOLM: We have, your Honor.

18 THE COURT: Did you note in there any mis-
19 statement of fact?

20 MR. CHISOLM: Yes, your Honor, there were two
21 statements in there that the defendant disagrees with,
22 and those were noted on the form provided by the representa-
23 tive of the probation department.

24 THE COURT: What were they?

25 MR. CHISOLM: There was a reference in there,

1 hpdr 3

2 your Honor, where the probation officer interviewed Mr. Flynn
3 and asked him for his version of the facts of this case, and
4 the probation officer's report indicated Mr. Flynn said he
5 did not wish to answer that because he intended to appeal,
6 and the correct version that the defendant would like to
7 have the Court understand is that he did not wish to
8 it discuss it with the probation officer until he discussed
9 a potential appeal with his attorney. The probation record
10 indicates that he did intend. After that discussion, he
11 does not intend to appeal. The other thing was, he was a
12 member of Howie Einter's gang or something, or some gang
13 that grew up in the neighborhood, and he happened to know
14 them but he is not a member of the gang as such.

15 There was another reference that said Mr. Flynn
16 denied having any scars or tattoos and he does have a tattoo
17 which is on his arm and a scar from his appendectomy.

18 THE COURT: I don't recall seeing that in the
19 presentence report. Is it in there?

20 MR. CHISOLM: He says he didn't say that to
21 the probation officer because he does have a tattoo and
22 an operation scar. I don't think that has much merit
23 one way or the other in a disposition. It is minor.

24 THE COURT: I just didn't recall it being
25 in the report. I will look at it again. Yes, I see it

1 hpdr 4

2 on page ten.

3 MR. CHISOLM: He does have a scar and tatto, your
4 Honor.

5 THE COURT: The Court notes the defendant's
6 objection to the statement in the presentence report that
7 he's a member of some gang. That has not been proved.

8 At this time, Mr. Chisolm, the Court will give you
9 an opportunity to say anything you wish on behalf of
10 the defendant, after which the Court will give the Govern-
11 ment an opportunity to say something and then the Court
12 will address the defendant seperately.

13 MR. CHISOLM: Yes, your Honor. May it please
14 the Court, I have examined the presentence report with
15 the defendant and it appears to be a fairly detailed on
16 of his background and his early beginnings as a child in
17 the city of Somerville, which is a suburb of Boston.
18 It appears Mr. Flynn was one of eight children by his
19 father and I guess one of six by his mother, being his
20 father was married, had two children and that relationship
21 ceased and he took up as indicated a relationship with the
22 woman which became this defendant's mother.

23 The background in the presentence report indicates
24 a difficult start in life. His parents, although not
25 married, also didn't live together all the time. The

1 hpdr 5

2 father was in court for alcoholism, also nonsupport of the
3 children, and the mother for neglect of children, which is
4 a criminaj charge in Massachusetts. Also the mother appears
5 to have been a state ward herself until the age of thiry
6 and there was indication the Society for Prevention of
7 Cruelty of Children was involved in the family matters
8 of this defendant, when he was a young fellow.

9 Also, the domestic discord, not only the mother and
10 father drinking, but it appears the father was in the courts
11 for assault and battery of the mother and the parents didn't
12 always live together. Perhaps as a result of that, unfortun-
13 ately, Mr. Flynn became involved with courts at an early
14 age, I think the tender age of ten, for larceny, a couple
15 of years for larceny, and he spent some of his earliest years
16 in the youth detention centers or juvenile correctional i
17 institutions. It is referred to Youth Service Board. That
18 agency is an agency that handles juveniles when incarcerated
19 in various institutions, in the Commonwealth of Massachusetts.
20 It appears he was before the Court for larceny at a young
21 age and had to spend some period of time in those juvenile
22 detention institutions. He went, I believe, to the
23 seventh grade in school and, as I suggested, had a some-
24 what difficult start in life. I know your Honor would
25 consider the facts that related to Counts 1 and 2, that

1 hpdr 6

2 occurred, in your disposition, and perhaps not three and
3 four that are not now before the Court for disposition.
4 I would ask the Court to naturally consider the facts
5 of the case before your Honor, Count 1 and 2, and consider
6 his prior record and also to consider the youth, which
7 is certainly not an excuse, not a justification, but
8 perhaps point out that life dealt him a different hand
9 than others and he had a more difficult start in life. I
10 know there are those that have perhaps a similar type
11 start in life and do overcome it and become so-called
12 successful in our society, become professional people.
13 That does happen but the odds are against that. The
14 odds are certainly the greater for someone to become a
15 professional person from that background but the percent-
16 ages are much smaller in those who have a better start in
17 life. Certainly his status is very clear from the pre-
18 sentence report. It is spelled out in detail and indicates
19 he had a tough start and was not able to get schooling
20 beyond the seventh grade.

21 I infer from the background, from the parental
22 situation and being in the low economic and social strata
23 of society, he wasn't able to go beyond the seventh grade,
24 and he became involved with the courts which is itemized
25 in the report. I know some charges were dismissed, five

1 hpdr 7

2 or six which indicated were dismissed and other charges
3 resulted in some incarceration, but I just ask the Court
4 to consider all the factors of the totality of the
5 situation in imposing a sentence, to be as fair as you can
6 to the Government and to the defendant.

7 THE COURT: Does the Government have anything
8 to say?

9 MR. BUCHWALD: The Government has no statement,
10 your Honor.

11 THE COURT: Mr. Flynn, you are now before the
12 Court for sentence, having been convicted after a trial by
13 a jury of two counts of Indictment 74 Crim. 336, which
14 charged violation of Title 18, United States Code, Section
15 371, of the conspiracy statute, and in Count 2, with
16 violation of Title 18, United States Code, Section 2313,
17 the stolen car and interstate commerce statute.

18 For the first offense the law provides a term of
19 imprisonment up to five years, and in addition, a fine up
20 to ten thousand dollars. With respect to the second count,
21 the law provides a term of imprisonment up to five years
22 and a fine up to five thousand dollars.

23 Do you wish to make a statement in your own behalf
24 at this time or to say anything as to why these maximum
25 penalties provided by the law should not be imposed in

1 hpdr 8

2 this case?

3 THE DEFENDANT: No, your Honor-

4 THE COURT: Mr. Flynn, looking at the pre-
5 sentence report in your case, it seems like you have been
6 this route before, is that right?

7 THE DEFENDANT: Excuse me, your Honor?

8 THE COURT: Looking at the presentence report
9 in your case it seems you have been this route before,
10 that is, trial and conviction for a major offense, is that
11 so?

12 THE DEFENDANT: The only thing I can say your
13 Honor, is b ack in '69 I did start maintaining a work
14 record, and I have a good job I can go back to. It is a
15 good job and many good jobs don't come along too often
16 now. The man did talk to me and he said we-- you're
17 going to be hearing, I'll be able to get you back. I
18 did start maintaining a good work record, your Honor.

19 THE COURT: Were you convicted of armed
20 robbery in Massachusetts in 1956 and sentenced to a term
21 of fiteen to twenty years?

22 THE DEFENDANT: Nineteen to twenty years, your
23 Honor.

24 THE COURT: Were you convicted in 1951 in
25 Massachusetts for breaking and entering?

1 hpdr 9

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And sentenced to the reformatory for
4 an indefi nite period up to five years?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: How much time did you already spend
7 in jail?

8 THE DEFENDANT: About four and a half months,
9 your Honor.

10 THE COURT: In your entire life? the pre-
11 sentence report indicates that you have been in jail, spent
12 at least ten years already in jail.

13 THE DEFENDANT: Yes, your Honor. It could be
14 a little more than that, your Honor.

15 THE COURT: Mr. Flynn, in view of your long
16 criminal record, which goes back a long way, and the
17 seriousness of the crime involved here, I don't think that
18 I have any alternative except to sentence you to a term of
19 imprisonment. the record seems to indicate that you are
20 a confirmed criminal and that jail-time does not deter you
21 from criminal activity.

22 THE DEFENDANT: May I say something, your Honor?

23 THE COURT: Yes.

24 THE DEFENDANT: I have a good job, I have a good
25 family, I have a wife and a couple of kids and I am not

1 hpdr 10

2 a confirmed criminal, your Honor.

3 THE COURT: Do you have any explanation for
4 this long criminal record?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Of course a good part of it goes
7 back to y our youth when you were a juvenile which as
8 your lawyer points out, is attributable to your unfortunate
9 life circumstances as a young person. The situation in
10 which you grew up apparently can be construed as a major
11 indictment of this society's failure to care for poor young
12 people. So that a great deal of your criminal activity as
13 a young person will be laid at the door of society, so
14 to speak.

15 But, after you became an adult it seems to me you
16 had an opportunity to disassociate yourself from criminal
17 activity, which you have not done. This conviction indi-
18 cates that, isn't that so?

19 This is a major robbery involving the theft of over
20 \$200,000. The jury found that you were part of the
21 conspiracy to commit that bank robbery and that you trans-
22 ported the car from Massachusetts which was used in the bank
23 robbery. That is a major serious crime. The evidence
24 shows the bank robbery was committed with the use of
25 firears, endangering other peoples lives, Mr. Flynn.

1 hpdr 11
2 These are not minor crimes.

3 Therefore, the judgement of the Court is that the
4 defendant be sentenced for a term of five years on the
5 conspiracy count to be followed by a term of three years
6 on the second count. The reason for that, Mr. Flynn is,
7 as I have stated, that crime was committed when you had
8 reached your maturity, so to speak, and you were well aware
9 of the penalties attached to crimes of this nature. You
10 had previously served many years in prison and had been
11 involved with the law on innumerable occasions before that.

12 This kind of conduct can't be condoned, particularly
13 since the bank robbery, as I have stated, was a major
14 robbery involving the use of firearms. The jury found that
15 you were part of the conspiracy to commit that bank
16 robbery. As I have indicated, the seriousness of your
17 criminal record does not mandate any further leniency
18 in your case.

19 The other two counts, I gather, there is no necessity
20 for a motion to dismiss those since he was acquitted of
21 those charges, is that it?

22 MR. BUCHWALD: That is correct, your Honor.

23 THE COURT: The total sentence is eight years,
24 five years on the conspiracy count and three years on the
25 stolen car.

1 hpdr 12

2 MR. BUCHWALD: Your Honor, I believe it would
3 be appropriate to advise him of his rights to appeal even
4 though Mr. Chisholm has said something about it.

5 THE COURT: Yes. Mr. Flynn, the Court has the
6 duty to advise you of your right to appeal. Do you under-
7 stand?

8 MR. FLYNN: Yes, your Honor.

9 THE COURT: And, if you do not have the funds
10 with which to take an appeal, the Court will provide a
11 lawyer for you to take the appeal. Do you understand?

12 MR. FLYNN: Yes, your Honor.

13 THE COURT: If you do not have the funds to take
14 an appeal, and desire to appeal, the Court will direct
15 the clerk to file a notice of appeal for you now. Do you
16 understand that?

17 MR. FLYNN: Yes.

18 THE COURT: And notice of appeal must be
19 filed within ten days. Do you understand that?

20 MR. FLYNN: Yes, your Honor.

21 THE COURT: Anything further?

22 MR. BUCHWALD: Nothing further, your Honor.

23 THE COURT: The defendant is remanded.
24
25

